

105TH CONGRESS
1ST SESSION

S. 8

To reauthorize and amend the Comprehensive Environmental Response,
Liability, and Compensation Act of 1980, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. SMITH of New Hampshire (for himself, Mr. CHAFEE, Mr. LOTT, Mr. ABRAHAM, Mr. ALLARD, Mr. COVERDELL, Mr. CRAIG, Mr. DEWINE, Mr. DOMENICI, Mr. GORTON, Mr. GRAMS, Mr. HAGEL, Mr. HATCH, Mr. HELMS, Mr. HUTCHINSON, Mr. KYL, Mr. LUGAR, Mr. MURKOWSKI, Mr. ROBERTS, Mr. SESSIONS, Mr. THURMOND, and Mr. WARNER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To reauthorize and amend the Comprehensive Environmental
Response, Liability, and Compensation Act of 1980, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Superfund Cleanup Acceleration Act of 1997.”

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—BROWNFIELDS REVITALIZATION

- Sec. 101. Brownfields.
- Sec. 102. Assistance for qualifying State voluntary response programs.
- Sec. 103. Enforcement in cases of a release subject to a State plan.
- Sec. 104. Contiguous properties.
- Sec. 105. Prospective purchasers and windfall liens.
- Sec. 106. Safe harbor innocent landholders.

TITLE II—STATE ROLE

- Sec. 201. Delegation to the States of authorities with respect to national priorities list facilities.

TITLE III—COMMUNITY PARTICIPATION

- Sec. 301. Community response organizations; technical assistance grants; improvement of public participation in the superfund decision-making process.

TITLE IV—SELECTION OF REMEDIAL ACTIONS

- Sec. 401. Definitions.
- Sec. 402. Selection and implementation of remedial actions.
- Sec. 403. Remedy selection methodology.
- Sec. 404. Remedy selection procedures.
- Sec. 405. Completion of physical construction and delisting.
- Sec. 406. Transition rules for facilities currently involved in remedy selection.
- Sec. 407. National Priorities List.

TITLE V—LIABILITY

- Sec. 501. Liability exceptions and limitations.
- Sec. 502. Contribution from the Fund.
- Sec. 503. Allocation of liability for certain facilities.
- Sec. 504. Liability of response action contractors.
- Sec. 505. Release of evidence.
- Sec. 506. Contribution protection.
- Sec. 507. Treatment of religious, charitable, scientific, and educational organizations as owners or operators.
- Sec. 508. Common carriers.
- Sec. 509. Limitation on liability of railroad owners.
- Sec. 510. Liability of recyclers.

TITLE VI—FEDERAL FACILITIES

- Sec. 601. Transfer of authorities.
- Sec. 602. Limitation on criminal liability of Federal officers, employees, and agents.
- Sec. 603. Innovative technologies for remedial action at Federal facilities.

TITLE VII—NATURAL RESOURCE DAMAGES

- Sec. 701. Restoration of natural resources.
- Sec. 702. Assessment of injury to and restoration of natural resources.

- Sec. 703. Consistency between response actions and resource restoration standards.
- Sec. 704. Contribution.

TITLE VIII—MISCELLANEOUS

- Sec. 801. Result-oriented cleanups.
- Sec. 802. National Priorities List.
- Sec. 803. Obligations from the fund for response actions.

TITLE IX—FUNDING

Subtitle A—General Provisions

- Sec. 901. Authorization of appropriations from the Fund.
- Sec. 902. Orphan share funding.
- Sec. 903. Department of Health and Human Services.
- Sec. 904. Limitations on research, development, and demonstration programs.
- Sec. 905. Authorization of appropriations from general revenues.
- Sec. 906. Additional limitations.
- Sec. 907. Reimbursement of potentially responsible parties.

1 **TITLE I—BROWNFIELDS** 2 **REVITALIZATION**

3 **SEC. 101. BROWNFIELDS.**

4 (a) IN GENERAL.—Title I of the Comprehensive En-
5 vironmental Response, Compensation, and Liability Act of
6 1980 (42 U.S.C. 9601 et seq.) is amended by adding at
7 the end the following:

8 **“SEC. 127. BROWNFIELDS.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) ADMINISTRATIVE COST.—The term ‘ad-
11 ministrative cost’ does not include the cost of—

12 “(A) investigation and identification of the
13 extent of contamination;

14 “(B) design and performance of a response
15 action; or

16 “(C) monitoring of natural resources.

1 “(2) BROWNFIELD FACILITY.—The term
2 ‘brownfield facility’ means—

3 “(A) a parcel of land that contains an
4 abandoned, idled, or underused commercial or
5 industrial facility, the expansion or redevelopment
6 of which is complicated by the presence or
7 potential presence of a hazardous substance;
8 but

9 “(B) does not include—

10 “(i) a facility that is the subject of a
11 removal or planned removal under title I;

12 “(ii) a facility that is listed or has
13 been proposed for listing on the National
14 Priorities List or that has been delisted
15 under section 134(d)(5);

16 “(iii) a facility that is subject to corrective
17 action under section 3004(u) or
18 3008(h) of the Solid Waste Disposal Act
19 (42 U.S.C. 6924(u) or 6928(h)) at the
20 time at which an application for a grant
21 concerning the facility is submitted under
22 this section;

23 “(iv) a land disposal unit with respect
24 to which—

1 “(I) a closure notification under
2 subtitle C of the Solid Waste Disposal
3 Act (42 U.S.C. 6921 et seq.) has been
4 submitted; and

5 “(II) closure requirements have
6 been specified in a closure plan or
7 permit;

8 “(v) a facility with respect to which
9 an administrative order on consent or judi-
10 cial consent decree requiring cleanup has
11 been entered into by the United States
12 under this Act, the Solid Waste Disposal
13 Act (42 U.S.C. 6901 et seq.), the Federal
14 Water Pollution Control Act (33 U.S.C.
15 1251 et seq.), the Toxic Substances Con-
16 trol Act (15 U.S.C. 2601 et seq.), or the
17 Safe Drinking Water Act (42 U.S.C. 300f
18 et seq.);

19 “(vi) a facility that is owned or oper-
20 ated by a department, agency, or instru-
21 mentality of the United States; or

22 “(vii) a portion of a facility, for which
23 portion, assistance for response activity
24 has been obtained under subtitle I of the
25 Solid Waste Disposal Act (42 U.S.C. 6991

1 et seq.) from the Leaking Underground
 2 Storage Tank Trust Fund established
 3 under section 9508 of the Internal Reve-
 4 nue Code of 1986.

5 “(3) ELIGIBLE ENTITY.—The term ‘eligible en-
 6 tity’ means—

7 “(A) a general purpose unit of local gov-
 8 ernment;

9 “(B) a land clearance authority or other
 10 quasi-governmental entity that operates under
 11 the supervision and control of or as an agent of
 12 a general purpose unit of local government;

13 “(C) a regional council or group of general
 14 purpose units of local government;

15 “(D) a redevelopment agency that is char-
 16 tered or otherwise sanctioned by a State; and

17 “(E) an Indian tribe.

18 “(b) BROWNFIELD CHARACTERIZATION GRANT PRO-
 19 GRAM.—

20 “(1) ESTABLISHMENT OF PROGRAM.—The Ad-
 21 ministrator shall establish a program to provide
 22 grants for the site characterization and assessment
 23 of brownfield facilities.

24 “(2) ASSISTANCE FOR SITE CHARACTERIZATION
 25 AND ASSESSMENT.—

1 “(A) IN GENERAL.—On approval of an ap-
2 plication made by an eligible entity, the Admin-
3 istrator may make grants out of the Fund to
4 the eligible entity to be used for the site charac-
5 terization and assessment of 1 or more
6 brownfield facilities or to capitalize a revolving
7 loan fund.

8 “(B) APPROPRIATE INQUIRY.—A site char-
9 acterization and assessment carried out with
10 the use of a grant under subparagraph (A)
11 shall be performed in accordance with section
12 101(35)(B).

13 “(3) MAXIMUM GRANT AMOUNT.—A grant
14 under subparagraph (A) shall not exceed, with re-
15 spect to any individual brownfield facility covered by
16 the grant, \$100,000 for any fiscal year or \$200,000
17 in total.

18 “(c) BROWNFIELD REMEDIATION GRANT PRO-
19 GRAM.—

20 “(1) ESTABLISHMENT OF PROGRAM.—The Ad-
21 ministrator shall establish a program to provide
22 grants to be used for capitalization of revolving loan
23 funds for response actions (excluding site character-
24 ization and assessment) at brownfield facilities.

1 “(2) ASSISTANCE FOR SITE CHARACTERIZATION
2 AND ASSESSMENT.—

3 “(A) IN GENERAL.—On approval of an ap-
4 plication made by a State or an eligible entity,
5 the Administrator may make grants out of the
6 Fund to the State or eligible entity to capitalize
7 a revolving loan fund to be used for response
8 actions (excluding site characterization and as-
9 sessment) at 1 or more brownfield facilities.

10 “(B) APPROPRIATE INQUIRY.—A site char-
11 acterization and assessment carried out with
12 the use of a grant under subparagraph (A)
13 shall be performed in accordance with section
14 101(35)(B).

15 “(3) MAXIMUM GRANT AMOUNT.—A grant
16 under subparagraph (A) shall not exceed, with re-
17 spect to any individual brownfield facility covered by
18 the grant, \$150,000 for any fiscal year or \$300,000
19 in total.

20 “(d) GENERAL PROVISIONS.—

21 “(1) SUNSET.—No amount shall be available
22 from the Fund for purposes of this section after the
23 fifth fiscal year after the date of enactment of this
24 section.

1 “(2) PROHIBITION.—No part of a grant under
 2 this section may be used for payment of penalties,
 3 fines, or administrative costs.

4 “(3) AUDITS.—The Inspector General of the
 5 Environmental Protection Agency shall audit an ap-
 6 propriate number of grants made under subsections
 7 (b)(2) and (c)(2) to ensure that funds are used for
 8 the purposes described in this section.

9 “(4) AGREEMENTS.—Each grant made under
 10 this section shall be subject to an agreement that—

11 “(A) requires the eligible entity to comply
 12 with all applicable State laws (including regula-
 13 tions);

14 “(B) requires that the eligible entity shall
 15 use the grant exclusively for purposes specified
 16 in subsection (b)(2) or (c)(2);

17 “(C) in the case of an application by a
 18 State under subsection (c)(2), payment by the
 19 State of a matching share of at least 50 percent
 20 of the costs of the response action for which the
 21 grant is made, from other sources of State
 22 funding; and

23 “(D) contains such other terms and condi-
 24 tions as the Administrator determines to be

1 necessary to carry out the purposes of this sec-
2 tion.

3 “(5) LEVERAGING.—An eligible entity that re-
4 ceives a grant under paragraph (1) may use the
5 funds for part of a project at a brownfield facility
6 for which funding is received from other sources, but
7 the grant shall be used only for the purposes de-
8 scribed in subsection (b)(2) or (c)(2).

9 “(e) GRANT APPLICATIONS.—

10 “(1) IN GENERAL.—Any eligible entity may
11 submit an application to the Administrator, through
12 a regional office of the Environmental Protection
13 Agency and in such form as the Administrator may
14 require, for a grant under this section for 1 or more
15 brownfield facilities.

16 “(2) APPLICATION REQUIREMENTS.—An appli-
17 cation for a grant under this section shall include—

18 “(A) an identification of each brownfield
19 facility for which the grant is sought and a de-
20 scription of the redevelopment plan for the area
21 or areas in which the brownfield facilities are
22 located, including a description of the nature
23 and extent of any known or suspected environ-
24 mental contamination within the area;

1 “(B) an analysis that demonstrates the po-
2 tential of the grant to stimulate economic devel-
3 opment on completion of the planned response
4 action, including a projection of the number of
5 jobs expected to be created at each facility after
6 remediation and redevelopment and, to the ex-
7 tent feasible, a description of the type and skill
8 level of the jobs and a projection of the in-
9 creases in revenues accruing to Federal, State,
10 and local governments from the jobs; and

11 “(C) information relevant to the ranking
12 criteria stated in paragraph (4).

13 “(3) APPROVAL.—

14 “(A) INITIAL GRANT.—On or about March
15 30 and September 30 of the first fiscal year fol-
16 lowing the date of enactment of this section, the
17 Administrator shall make grants under this sec-
18 tion to eligible entities that submit applications
19 before those dates that the Administrator deter-
20 mines have the highest rankings under ranking
21 criteria established under paragraph (4).

22 “(B) SUBSEQUENT GRANTS.—Beginning
23 with the second fiscal year following the date of
24 enactment of this section, the Administrator

1 shall make an annual evaluation of each appli-
2 cation received during the prior fiscal year and
3 make grants under this section to eligible enti-
4 ties that submit applications during the prior
5 year that the Administrator determines have
6 the highest rankings under the ranking criteria
7 established under paragraph (4).

8 “(4) RANKING CRITERIA.—The Administrator
9 shall establish a system for ranking grant applica-
10 tions that includes the following criteria:

11 “(A) The extent to which a grant will stim-
12 ulate the availability of other funds for environ-
13 mental remediation and subsequent redevelop-
14 ment of the area in which the brownfield facili-
15 ties are located.

16 “(B) The potential of the development plan
17 for the area in which the brownfield facilities
18 are located to stimulate economic development
19 of the area on completion of the cleanup, such
20 as the following:

21 “(i) The relative increase in the esti-
22 mated fair market value of the area as a
23 result of any necessary response action.

24 “(ii) The potential of a grant to cre-
25 ate new or expand existing business and

1 employment opportunities (particularly
2 full-time employment opportunities) on
3 completion of any necessary response ac-
4 tion.

5 “(iii) The estimated additional tax
6 revenues expected to be generated by eco-
7 nomic redevelopment in the area in which
8 a brownfield facility is located.

9 “(iv) The estimated extent to which a
10 grant would facilitate the identification of
11 or facilitate a reduction of health and envi-
12 ronmental risks.

13 “(v) The financial involvement of the
14 State and local government in any re-
15 sponse action planned for a brownfield fa-
16 cility and the extent to which the response
17 action and the proposed redevelopment is
18 consistent with any applicable State or
19 local community economic development
20 plan.

21 “(vi) The extent to which the site
22 characterization and assessment or re-
23 sponse action and subsequent development
24 of a brownfield facility involves the active

1 participation and support of the local com-
 2 munity.

3 “(vii) Such other factors as the Ad-
 4 ministrator considers appropriate to carry
 5 out the purposes of this section.”.

6 (b) FUNDING.—Section 111 of the Comprehensive
 7 Environmental Response, Compensation, and Liability Act
 8 of 1980 (42 U.S.C. 9611) is amended by adding at the
 9 end the following:

10 “(q) BROWNFIELD CHARACTERIZATION GRANT PRO-
 11 GRAM.—For each of fiscal years 1998 through 2002, not
 12 more than \$15,000,000 of the amounts available in the
 13 Fund may be used to carry out section 127(b).

14 “(r) BROWNFIELD REMEDIATION GRANT PRO-
 15 GRAM.—For each of fiscal years 1998 through 2002, not
 16 more than \$25,000,000 of the amounts available in the
 17 Fund may be used to carry out section 127(c).”.

18 **SEC. 102. ASSISTANCE FOR QUALIFYING STATE VOL-**
 19 **UNTARY RESPONSE PROGRAMS.**

20 (a) DEFINITION.—Section 101 of the Comprehensive
 21 Environmental Response, Compensation, and Liability Act
 22 of 1980 (42 U.S.C. 9601) is amended by adding at the
 23 end the following:

“(39) QUALIFYING STATE VOLUNTARY RESPONSE
PROGRAM.—The term ‘qualifying State voluntary re-
sponse program’ means a State program that in-
cludes the elements described in section 128(b).”.

(b) QUALIFYING STATE VOLUNTARY RESPONSE PRO-
GRAMS.—Title I of the Comprehensive Environmental Re-
sponse, Compensation, and Liability Act of 1980 (42
U.S.C. 9601 et seq.) (as amended by section 101(a)) is
amended by adding at the end the following:

10 **“SEC. 128. QUALIFYING STATE VOLUNTARY RESPONSE PRO-**
11 **GRAMS.**

“(a) ASSISTANCE TO STATES.—The Administrator shall provide technical and other assistance to States to establish and expand qualifying State voluntary response programs that include the elements listed in subsection (b).

17 “(b) ELEMENTS.—The elements of a qualifying State
18 voluntary response program are the following:

19 “(1) Opportunities for technical assistance for
20 voluntary response actions.

21 “(2) Adequate opportunities for public partici-
22 pation, including prior notice and opportunity for
23 comment in appropriate circumstances, in selecting
24 response actions.

1 “(3) Streamlined procedures to ensure expedi-
2 tious voluntary response actions.

3 “(4) Oversight and enforcement authorities or
4 other mechanisms that are adequate to ensure
5 that—

6 “(A) voluntary response actions will pro-
7 tect human health and the environment and be
8 conducted in accordance with applicable Federal
9 and State law; and

10 “(B) if the person conducting the vol-
11 untary response action fails to complete the
12 necessary response activities, including oper-
13 ation and maintenance or long-term monitoring
14 activities, the necessary response activities are
15 completed.

16 “(5) Mechanisms for approval of a voluntary re-
17 sponse action plan.

18 “(6) A requirement for certification or similar
19 documentation from the State to the person conduct-
20 ing the voluntary response action indicating that the
21 response is complete.

22 “(c) COMPLIANCE WITH ACT.—A person that con-
23 ducts a voluntary response action under this section at a
24 facility that is listed or proposed for listing on the Na-
25 tional Priorities List shall implement applicable provisions

1 of this Act or of similar provisions of State law in a man-
 2 ner comporting with State policy, so long as the remedial
 3 action that is selected protects human health and the envi-
 4 ronment to the same extent as would a remedial action
 5 selected by the Administrator under section 121(a).”.

6 (c) FUNDING.—Section 111 of the Comprehensive
 7 Environmental Response, Compensation, and Liability Act
 8 of 1980 (42 U.S.C. 9611) (as amended by section 101(b))
 9 is amended by adding at the end the following:

10 “(s) QUALIFYING STATE VOLUNTARY RESPONSE
 11 PROGRAM.—For each of fiscal years 1998 through 2002,
 12 not more than \$25,000,000 of the amounts available in
 13 the Fund may be used for assistance to States to establish
 14 and administer qualifying State voluntary response pro-
 15 grams, during the first 5 full fiscal years following the
 16 date of enactment of this subparagraph, distributed
 17 among each of the States that notifies the Administrator
 18 of the State’s intent to establish a qualifying State vol-
 19 untary response program and each of the States with a
 20 qualifying State voluntary response program. For each fis-
 21 cal year there shall be available to each eligible entity a
 22 grant in the amount of at least \$250,000.”.

1 **SEC. 103. ENFORCEMENT IN CASES OF A RELEASE SUBJECT**
2 **TO A STATE PLAN.**

3 Title I of the Comprehensive Environmental Re-
4 sponse, Compensation, and Liability Act of 1980 (42
5 U.S.C. 9601 et seq.) is amended by adding at the end
6 the following:

7 **“SEC. 129. ENFORCEMENT IN CASES OF A RELEASE SUB-**
8 **JECT TO A STATE PLAN.**

9 “(a) IN GENERAL.—In the case of a facility at which
10 there is a release or threatened release of a hazardous sub-
11 stance subject to a State remedial action plan or with re-
12 spect to which the State has provided certification or simi-
13 lar documentation that response action has been com-
14 pleted under a State remedial action plan, neither the
15 President nor any other person may use any authority
16 under this Act to take an administrative or judicial en-
17 forcement action or to bring a private civil action against
18 any person regarding any matter that is within the scope
19 of the plan.

20 “(b) RELEASES NOT SUBJECT TO STATE PLANS.—
21 For any facility at which there is a release or threatened
22 release of hazardous substances that is not subject to a
23 State remedial action plan, the President shall provide no-
24 tice to the State within 48 hours after issuing an order
25 under section 106(a) addressing a release or threatened
26 release. Such an order shall cease to have force or effect

1 on the date that is 90 days after issuance unless the State
 2 concurs in the continuation of the order.

3 “(c) COST OR DAMAGE RECOVERY ACTIONS.—Sub-
 4 section (a) does not apply to an action brought by a State
 5 or Indian tribe for the recovery of costs or damages under
 6 section 107.”.

7 **SEC. 104. CONTIGUOUS PROPERTIES.**

8 (a) IN GENERAL.—Section 107 of the Comprehensive
 9 Environmental Response, Compensation, and Liability Act
 10 of 1980 (42 U.S.C. 9607(a)) is amended by adding at the
 11 end the following:

12 “(o) CONTIGUOUS PROPERTIES.—

13 “(1) NOT CONSIDERED TO BE AN OWNER OR
 14 OPERATOR.—A person that owns or operates real
 15 property that is contiguous to or otherwise similarly
 16 situated with respect to real property on which there
 17 has been a release or threatened release of a hazard-
 18 ous substance and that is or may be contaminated
 19 by the release shall not be considered to be an owner
 20 or operator of a vessel or facility under subsection
 21 (a) (1) or (2) solely by reason of the contamination
 22 if—

23 “(A) the person did not cause, contribute,
 24 or consent to the release or threatened release;
 25 and

1 “(B) the person is not liable, and is not af-
2 filiated with any other person that is liable, for
3 any response costs at the facility, through any
4 direct or indirect familial relationship, or any
5 contractual, corporate, or financial relationship
6 other than that created by the instruments by
7 which title to the facility is conveyed or fi-
8 nanced.

9 “(2) COOPERATION, ASSISTANCE, AND AC-
10 CESS.—Notwithstanding paragraph (1), a person de-
11 scribed in paragraph (1) shall provide full coopera-
12 tion, assistance, and facility access to the persons
13 that are responsible for response actions at the facil-
14 ity, including the cooperation and access necessary
15 for the installation, integrity, operation, and mainte-
16 nance of any complete or partial response action at
17 the facility.

18 “(3) ASSURANCES.—The Administrator may—

19 “(A) issue an assurance that no enforce-
20 ment action under this Act will be initiated
21 against a person described in paragraph (1);
22 and

23 “(B) grant a person described in para-
24 graph (1) protection against a cost recovery or
25 contribution action under section 113(f).”.

1 (b) CONFORMING AMENDMENT.—Section 107(a) of
 2 the Comprehensive Environmental Response, Compensa-
 3 tion, and Liability Act of 1980 (42 U.S.C. 9607) is
 4 amended by striking “of this section” and inserting “and
 5 the exemptions and limitations stated in this section”.

6 **SEC. 105. PROSPECTIVE PURCHASERS AND WINDFALL**
 7 **LIENS.**

8 (a) DEFINITION.—Section 101 of the Comprehensive
 9 Environmental Response, Compensation, and Liability Act
 10 of 1980 (42 U.S.C. 9601) (as amended by section 102(a))
 11 is amended by adding at the end the following:

12 “(40) BONA FIDE PROSPECTIVE PURCHASER.—
 13 The term ‘bona fide prospective purchaser’ means a
 14 person that acquires ownership of a facility after the
 15 date of enactment of this paragraph, or a tenant of
 16 such a person, that establishes each of the following
 17 by a preponderance of the evidence:

18 “(A) DISPOSAL PRIOR TO ACQUISITION.—
 19 All active disposal of hazardous substances at
 20 the facility occurred before the person acquired
 21 the facility.

22 “(B) INQUIRIES.—

23 “(i) IN GENERAL.—The person made
 24 all appropriate inquiries into the previous
 25 ownership and uses of the facility and the

1 facility's real property in accordance with
2 generally accepted good commercial and
3 customary standards and practices.

4 “(ii) STANDARDS AND PRACTICES.—
5 The standards and practices referred to in
6 paragraph (35)(B)(ii) or those issued or
7 adopted by the Administrator under that
8 paragraph shall be considered to satisfy
9 the requirements of this subparagraph.

10 “(iii) RESIDENTIAL USE.—In the case
11 of property for residential or other similar
12 use purchased by a nongovernmental or
13 noncommercial entity, a facility inspection
14 and title search that reveal no basis for
15 further investigation shall be considered to
16 satisfy the requirements of this subpara-
17 graph.

18 “(C) NOTICES.—The person provided all
19 legally required notices with respect to the dis-
20 covery or release of any hazardous substances
21 at the facility.

22 “(D) CARE.—The person exercised appro-
23 priate care with respect to each hazardous sub-
24 stance found at the facility by taking reasonable
25 steps to stop any continuing release, prevent

1 any threatened future release and prevent or
2 limit human or natural resource exposure to
3 any previously released hazardous substance.

4 “(E) COOPERATION, ASSISTANCE, AND AC-
5 CESS.—The person provides full cooperation,
6 assistance, and facility access to the persons
7 that are responsible for response actions at the
8 facility, including the cooperation and access
9 necessary for the installation, integrity, oper-
10 ation, and maintenance of any complete or par-
11 tial response action at the facility.

12 “(F) RELATIONSHIP.—The person is not
13 liable, and is not affiliated with any other per-
14 son that is liable, for any response costs at the
15 facility, through any direct or indirect familial
16 relationship, or any contractual, corporate, or
17 financial relationship other than that created by
18 the instruments by which title to the facility is
19 conveyed or financed.”.

20 (b) AMENDMENT.—Section 107 of the Comprehen-
21 sive Environmental Response, Compensation, and Liabil-
22 ity Act of 1980 (42 U.S.C. 9607) (as amended by section
23 104) is amended by adding at the end the following:

24 “(p) PROSPECTIVE PURCHASER AND WINDFALL
25 LIEN.—

1 “(1) LIMITATION ON LIABILITY.—Notwith-
2 standing subsection (a), a bona fide prospective pur-
3 chaser whose potential liability for a release or
4 threatened release is based solely on the purchaser’s
5 being considered to be an owner or operator of a fa-
6 cility shall not be liable as long as the bona fide pro-
7 spective purchaser does not impede the performance
8 of a response action or natural resource restoration.

9 “(2) LIEN.—If there are unrecovered response
10 costs at a facility for which an owner of the facility
11 is not liable by reason of section 101(20)(G)(iii) and
12 each of the conditions described in paragraph (3) is
13 met, the United States shall have a lien on the facil-
14 ity, or may obtain from appropriate responsible
15 party a lien on any other property or other assur-
16 ances of payment satisfactory to the Administrator,
17 for such unrecovered costs.

18 “(3) CONDITIONS.—The conditions referred to
19 in paragraph (1) are the following:

20 “(A) RESPONSE ACTION.—A response ac-
21 tion for which there are unrecovered costs is
22 carried out at the facility.

23 “(B) FAIR MARKET VALUE.—The response
24 action increases the fair market value of the fa-
25 cility above the fair market value of the facility

1 that existed 180 days before the response action
2 was initiated.

3 “(C) SALE.—A sale or other disposition of
4 all or a portion of the facility has occurred.

5 “(4) AMOUNT.—A lien under paragraph (2)—

6 “(A) shall not exceed the increase in fair
7 market value of the property attributable to the
8 response action at the time of a subsequent sale
9 or other disposition of the property;

10 “(B) shall arise at the time at which costs
11 are first incurred by the United States with re-
12 spect to a response action at the facility;

13 “(C) shall be subject to the requirements
14 of subsection (l)(3); and

15 “(D) shall continue until the earlier of sat-
16 isfaction of the lien or recovery of all response
17 costs incurred at the facility.”.

18 **SEC. 106. SAFE HARBOR INNOCENT LANDHOLDERS.**

19 (a) AMENDMENT.—Section 101(35) of the Com-
20 prehensive Environmental Response, Compensation, and
21 Liability Act of 1980 (42 U.S.C. 9601(35)) is amended
22 by striking subparagraph (B) and inserting the following:

23 “(B) KNOWLEDGE OF INQUIRY REQUIRE-
24 MENT.—

1 “(i) ALL APPROPRIATE INQUIRIES.—

2 To establish that the defendant had no
3 reason to know of the matter described in
4 subparagraph (A)(i), the defendant must
5 show that, at or prior to the date on which
6 the defendant acquired the facility, the de-
7 fendant undertook all appropriate inquiries
8 into the previous ownership and uses of the
9 facility in accordance with generally ac-
10 cepted good commercial and customary
11 standards and practices.

12 “(ii) STANDARDS AND PRACTICES.—

13 The Administrator shall by regulation es-
14 tablish as standards and practices for the
15 purpose of clause (i)—

16 “(I) the American Society for
17 Testing and Materials (ASTM) Stand-
18 ard E1527–94, entitled ‘Standard
19 Practice for Environmental Site As-
20 sessments: Phase I Environmental
21 Site Assessment Process’; or

22 “(II) alternative standards and
23 practices under clause (iii).

24 “(iii) ALTERNATIVE STANDARDS AND
25 PRACTICES.—

1 “(I) IN GENERAL.—The Admin-
2 istrator may by regulation issue alter-
3 native standards and practices or des-
4 ignate standards developed by other
5 organizations than the American Soci-
6 ety for Testing and Materials after
7 conducting a study of commercial and
8 industrial practices concerning the
9 transfer of real property in the United
10 States.

11 “(II) CONSIDERATIONS.—In issu-
12 ing or designating alternative stand-
13 ards and practices under subclause
14 (I), the Administrator shall consider
15 including each of the following:

16 “(aa) The results of an in-
17 quiry by an environmental pro-
18 fessional.

19 “(bb) Interviews with past
20 and present owners, operators,
21 and occupants of the facility and
22 the facility’s real property for the
23 purpose of gathering information

1 regarding the potential for con-
2 tamination at the facility and the
3 facility's real property.

4 “(cc) Reviews of historical
5 sources, such as chain of title
6 documents, aerial photographs,
7 building department records, and
8 land use records to determine
9 previous uses and occupancies of
10 the real property since the prop-
11 erty was first developed.

12 “(dd) Searches for recorded
13 environmental cleanup liens, filed
14 under Federal, State, or local
15 law, against the facility or the fa-
16 cility's real property.

17 “(ee) Reviews of Federal,
18 State, and local government
19 records (such as waste disposal
20 records), underground storage
21 tank records, and hazardous
22 waste handling, generation, treat-
23 ment, disposal, and spill records,
24 concerning contamination at or

1 near the facility or the facility's
2 real property.

3 “(ff) Visual inspections of
4 the facility and facility's real
5 property and of adjoining prop-
6 erties.

7 “(gg) Specialized knowledge
8 or experience on the part of the
9 defendant.

10 “(hh) The relationship of
11 the purchase price to the value of
12 the property if the property was
13 uncontaminated.

14 “(ii) Commonly known or
15 reasonably ascertainable informa-
16 tion about the property.

17 “(jj) The degree of obvious-
18 ness of the presence or likely
19 presence of contamination at the
20 property, and the ability to detect
21 such contamination by appro-
22 priate investigation.

23 “(iv) SITE INSPECTION AND TITLE
24 SEARCH.—In the case of property for resi-
25 dential use or other similar use purchased

1 by a nongovernmental or noncommercial
 2 entity, a facility inspection and title search
 3 that reveal no basis for further investiga-
 4 tion shall be considered to satisfy the re-
 5 quirements of this subparagraph.”.

6 (b) STANDARDS AND PRACTICES.—

7 (1) ESTABLISHMENT BY REGULATION.—The
 8 Administrator of the Environmental Protection
 9 Agency shall issue the regulation required by section
 10 101(35)(B)(ii) of the Comprehensive Environmental
 11 Response, Compensation, and Liability Act of 1980
 12 (as added by subsection (a)) not later than 1 year
 13 after the date of enactment of this Act.

14 (2) INTERIM STANDARDS AND PRACTICES.—
 15 Until the Administrator issues the regulation de-
 16 scribed in paragraph (1), in making a determination
 17 under section 101(35)(B)(i) of the Comprehensive
 18 Environmental Response, Compensation, and Liabil-
 19 ity Act of 1980 (as added by subsection (a)), there
 20 shall be taken into account—

21 (A) any specialized knowledge or experi-
 22 ence on the part of the defendant;

23 (B) the relationship of the purchase price
 24 to the value of the property if the property was
 25 uncontaminated;

1 (C) commonly known or reasonably ascer-
 2 tainable information about the property;

3 (D) the degree of obviousness of the pres-
 4 ence or likely presence of contamination at the
 5 property; and

6 (E) the ability to detect the contamination
 7 by appropriate investigation.

8 **TITLE II—STATE ROLE**

9 **SEC. 201. DELEGATION TO THE STATES OF AUTHORITIES** 10 **WITH RESPECT TO NATIONAL PRIORITIES** 11 **LIST FACILITIES.**

12 (a) IN GENERAL.—Title I of the Comprehensive En-
 13 vironmental Response, Compensation, and Liability Act of
 14 1980 (42 U.S.C. 9601 et seq.) (as amended by section
 15 103) is amended by adding at the end the following:

16 **“SEC. 130. DELEGATION TO THE STATES OF AUTHORITIES** 17 **WITH RESPECT TO NATIONAL PRIORITIES** 18 **LIST FACILITIES.**

19 “(a) DEFINITIONS.—In this section:

20 “(1) COMPREHENSIVE DELEGATION STATE.—

21 The term ‘comprehensive delegation State’, with re-
 22 spect to a facility, means a State to which the Ad-
 23 ministrator has delegated authority to perform all of
 24 the categories of delegable authority.

“(2) DELEGABLE AUTHORITY.—The term ‘delegable authority’ means authority to perform (or ensure performance of) all of the authorities included in any 1 or more of the categories of authority:

“(A) CATEGORY A.—All authorities necessary to perform technical investigations, evaluations, and risk analyses, including—

“(i) a preliminary assessment or facility evaluation under section 104;

“(ii) facility characterization under section 104;

“(iii) a remedial investigation under section 104;

“(iv) a facility-specific risk evaluation under section 131;

“(v) enforcement authority related to the authorities described in clauses (i) through (iv); and

“(vi) any other authority identified by the Administrator under subsection (b).

“(B) CATEGORY B.—All authorities necessary to perform alternatives development and remedy selection, including—

“(i) a feasibility study under section 104; and

1 “(ii)(I) remedial action selection
 2 under section 121 (including issuance of a
 3 record of decision); or

4 “(II) remedial action planning under
 5 section 133(b)(5);

6 “(iii) enforcement authority related to
 7 the authorities described in clauses (i) and
 8 (ii); and

9 “(iv) any other authority identified by
 10 the Administrator under subsection (b).

11 “(C) CATEGORY C.—All authorities nec-
 12 essary to perform remedial design, including—

13 “(i) remedial design under section
 14 121;

15 “(ii) enforcement authority related to
 16 the authority described in clause (i); and

17 “(iii) any other authority identified by
 18 the Administrator under subsection (b).

19 “(D) CATEGORY D.—All authorities nec-
 20 essary to perform remedial action and operation
 21 and maintenance, including—

22 “(i) a removal under section 104;

23 “(ii) a remedial action under section
 24 104 or section 10 (a) or (b);

1 “(iii) operation and maintenance
2 under section 104(c);

3 “(iv) enforcement authority related to
4 the authorities described in clauses (i)
5 through (iii); and

6 “(v) any other authority identified by
7 the Administrator under subsection (b).

8 “(E) CATEGORY E.—All authorities nec-
9 essary to perform information collection and al-
10 location of liability, including—

11 “(i) information collection activity
12 under section 104(e);

13 “(ii) allocation of liability under sec-
14 tion 136;

15 “(iii) a search for potentially respon-
16 sible parties under section 104 or 107;

17 “(iv) settlement under section 122;

18 “(v) enforcement authority related to
19 the authorities described in clauses (i)
20 through (iv); and

21 “(vi) any other authority identified by
22 the Administrator under subsection (b).

23 “(3) DELEGATED STATE.—The term ‘delegated
24 State’ means a State to which delegable authority
25 has been delegated under subsection (c), except as

1 may be provided in a delegation agreement in the
2 case of a limited delegation of authority under sub-
3 section (c)(5).

4 “(4) DELEGATED AUTHORITY.—The term ‘dele-
5 gated authority’ means a delegable authority that
6 has been delegated to a delegated State under this
7 section.

8 “(5) DELEGATED FACILITY.—The term ‘dele-
9 gated facility’ means a non-federal listed facility
10 with respect to which a delegable authority has been
11 delegated to a State under this section.

12 “(6) ENFORCEMENT AUTHORITY.—The term
13 “enforcement authority” means all authorities nec-
14 essary to recover response costs, require potentially
15 responsible parties to perform response actions, and
16 otherwise compel implementation of a response ac-
17 tion, including—

18 “(A) issuance of an order under section
19 106(a);

20 “(B) a response action cost recovery under
21 section 107;

22 “(C) imposition of a civil penalty or award
23 under section 109 (a)(1)(D) or (b)(4);

24 “(D) settlement under section 122; and

1 “(E) any other authority identified by the
2 Administrator under subsection (b).

3 “(7) NONCOMPREHENSIVE DELEGATION
4 STATE.—The term ‘noncomprehensive delegation
5 State’, with respect to a facility, means a State to
6 which the Administrator has delegated authority to
7 perform fewer than all of the categories of delegable
8 authority.

9 “(8) NONDELEGABLE AUTHORITY.—The term
10 ‘nondelegable authority’ means authority to—

11 “(A) make grants to community response
12 organizations under section 117; and

13 “(B) conduct research and development ac-
14 tivities under any provision of this Act.

15 “(9) NON-FEDERAL LISTED FACILITY.—The
16 term ‘non-federal listed facility’ means a facility
17 that—

18 “(A) is not owned or operated by a depart-
19 ment, agency, or instrumentality of the United
20 States in any branch of the Government; and

21 “(B) is listed on the National Priorities
22 List.

23 “(b) IDENTIFICATION OF DELEGABLE AUTHORI-
24 TIES.—

1 “(1) IN GENERAL.—The President shall by reg-
 2 ulation identify all of the authorities of the Adminis-
 3 trator that shall be included in a delegation of any
 4 category of delegable authority described in sub-
 5 section (a)(2).

6 “(2) LIMITATION.—The Administrator shall not
 7 identify a nondelegable authority for inclusion in a
 8 delegation of any category of delegable authority.

9 “(c) DELEGATION OF AUTHORITY.—

10 “(1) IN GENERAL.—Pursuant to an approved
 11 State application, the Administrator shall delegate
 12 authority to perform 1 or more delegable authorities
 13 with respect to 1 or more non-Federal listed facili-
 14 ties in the State.

15 “(2) APPLICATION.—An application under
 16 paragraph (1) shall—

17 “(A) identify each non-Federal listed facil-
 18 ity for which delegation is requested;

19 “(B) identify each delegable authority that
 20 is requested to be delegated for each non-Fed-
 21 eral listed facility for which delegation is re-
 22 quested; and

1 “(C) certify that the State, supported by
2 such documentation as the State, in consulta-
3 tion with the Administrator, considers to be ap-
4 propriate—

5 “(i) has statutory and regulatory au-
6 thority (including appropriate enforcement
7 authority) to perform the requested dele-
8 gable authorities in a manner that is pro-
9 tective of human health and the environ-
10 ment;

11 “(ii) has resources in place to ade-
12 quately administer and enforce the au-
13 thorities;

14 “(iii) has procedures to ensure public
15 notice and, as appropriate, opportunity for
16 comment on remedial action plans, consist-
17 ent with sections 117 and 133; and

18 “(iv) agrees to exercise its enforce-
19 ment authorities to require that persons
20 that are potentially liable under section
21 107(a), to the extent practicable, perform
22 and pay for the response actions set forth
23 in each category described in subsection
24 (a)(2).

25 “(3) APPROVAL OF APPLICATION.—

1 “(A) IN GENERAL.—Not later than 60
2 days after receiving an application under para-
3 graph (2) by a State that is authorized to ad-
4 minister and enforce the corrective action re-
5 quirements of a hazardous waste program
6 under section 3006 of the Solid Waste Disposal
7 Act (42 U.S.C. 6926), and not later than 120
8 days after receiving an application from a State
9 that is not authorized to administer and enforce
10 the corrective action requirements of a hazard-
11 ous waste program under section 3006 of the
12 Solid Waste Disposal Act (42 U.S.C. 6926), un-
13 less the State agrees to a greater length of time
14 for the Administrator to make a determination,
15 the Administrator shall—

16 “(i) issue a notice of approval of the
17 application (including approval or dis-
18 approval regarding any or all of the facili-
19 ties with respect to which a delegation of
20 authority is requested or with respect to
21 any or all of the authorities that are re-
22 quested to be delegated); or

23 “(ii) if the Administrator determines
24 that the State does not have adequate legal

1 authority, financial and personnel re-
 2 sources, organization, or expertise to ad-
 3 minister and enforce any of the requested
 4 delegable authority, issue a notice of dis-
 5 approval, including an explanation of the
 6 basis for the determination.

7 “(B) FAILURE TO ACT.—If the Adminis-
 8 trator does not issue a notice of approval or no-
 9 tice of disapproval of all or any portion of an
 10 application within the applicable time period
 11 under subparagraph (A), the application shall
 12 be deemed to have been granted.

13 “(C) RESUBMISSION OF APPLICATION.—

14 “(i) IN GENERAL.—If the Adminis-
 15 trator disapproves an application under
 16 paragraph (1), the State may resubmit the
 17 application at any time after receiving the
 18 notice of disapproval.

19 “(ii) FAILURE TO ACT.—If the Ad-
 20 ministrator does not issue a notice of ap-
 21 proval or notice of disapproval of a resub-
 22 mitted application within the applicable
 23 time period under subparagraph (A), the
 24 resubmitted application shall be deemed to
 25 have been granted.

1 “(D) NO ADDITIONAL TERMS OR CONDI-
 2 TIONS.—The Administrator shall not impose
 3 any term or condition on the approval of an ap-
 4 plication that meets the requirements stated in
 5 paragraph (2) (except that any technical defi-
 6 ciencies in the application be corrected).

7 “(E) JUDICIAL REVIEW.—The State (but
 8 no other person) shall be entitled to judicial re-
 9 view under section 113(b) of a disapproval of a
 10 resubmitted application.

11 “(4) DELEGATION AGREEMENT.—On approval
 12 of a delegation of authority under this section, the
 13 Administrator and the delegated State shall enter
 14 into a delegation agreement that identifies each cat-
 15 egory of delegable authority that is delegated with
 16 respect to each delegated facility.

17 “(5) LIMITED DELEGATION.—

18 “(A) IN GENERAL.—In the case of a State
 19 that does not meet the requirements of para-
 20 graph (2)(C) the Administrator may delegate to
 21 the State limited authority to perform, ensure
 22 the performance of, or supervise or otherwise
 23 participate in the performance of 1 or more del-
 24 egable authorities, as appropriate in view of the
 25 extent to which the State has the required legal

1 authority, financial and personnel resources, or-
 2 ganization, and expertise.

3 “(B) SPECIAL PROVISIONS.—In the case of
 4 a limited delegation of authority to a State
 5 under subparagraph (A), the Administrator
 6 shall specify the extent to which the State shall
 7 be considered to be a delegated State for the
 8 purposes of this Act.

9 “(d) PERFORMANCE OF DELEGATED AUTHORI-
 10 TIES.—

11 “(1) IN GENERAL.—A delegated State shall
 12 have sole authority (except as provided in paragraph
 13 (6)(B), subsection (e)(4), and subsection (g)) to per-
 14 form a delegated authority with respect to a dele-
 15 gated facility.

16 “(2) AGREEMENTS FOR PERFORMANCE OF DEL-
 17 EGATED AUTHORITIES.—

18 “(A) IN GENERAL.—Except as provided in
 19 subparagraph (B), a delegated State may enter
 20 into an agreement with a political subdivision of
 21 the State, an interstate body comprised of that
 22 State and another delegated State or States, or
 23 a combination of such subdivisions or interstate
 24 bodies, providing for the performance of any
 25 category of delegated authority with respect to

1 a delegated facility in the State if the parties to
 2 the agreement agree in the agreement to under-
 3 take response actions that are consistent with
 4 this Act.

5 “(B) NO AGREEMENT WITH POTENTIALLY
 6 RESPONSIBLE PARTY.—A delegated State shall
 7 not enter into an agreement under subpara-
 8 graph (A) with a political subdivision or inter-
 9 state body that is, or includes as a component
 10 an entity that is, a potentially responsible party
 11 with respect to a delegated facility covered by
 12 the agreement.

13 “(C) CONTINUING RESPONSIBILITY.—A
 14 delegated State that enters into an agreement
 15 under subparagraph (A)—

16 “(i) shall exercise supervision over
 17 and approve the activities of the parties to
 18 the agreement; and

19 “(ii) shall remain responsible for en-
 20 suring performance of the delegated au-
 21 thority.

22 “(3) COMPLIANCE WITH ACT.—

23 “(A) NONCOMPREHENSIVE DELEGATION
 24 STATES.—A noncomprehensive delegation State
 25 shall implement each applicable provision of

1 this Act (including regulations and guidance is-
 2 sued by the Administrator) so as to perform
 3 each delegated authority with respect to a dele-
 4 gated facility in the same manner as would the
 5 Administrator with respect to a facility that is
 6 not a delegated facility.

7 “(B) COMPREHENSIVE DELEGATION
 8 STATES.—

9 “(i) IN GENERAL.—A comprehensive
 10 delegation State shall implement applicable
 11 provisions of this Act or of similar provi-
 12 sions of State law in a manner comporting
 13 with State policy, so long as the remedial
 14 action that is selected protects human
 15 health and the environment to the same
 16 extent as would a remedial action selected
 17 by the Administrator under section 121.

18 “(ii) COSTLIER REMEDIAL ACTION.—

19 “(I) IN GENERAL.—A delegated
 20 State may select a remedial action for
 21 a delegated facility that has a greater
 22 response cost (including operation and
 23 maintenance costs) than the response
 24 cost for a remedial action that would
 25 be selected by the Administrator

1 under section 121, if the State pays
2 for the difference in cost.

3 “(II) NO COST RECOVERY.—If a
4 delegated State selects a more costly
5 remedial action under subclause (I),
6 the State shall not be entitled to seek
7 cost recovery under this Act or any
8 other Federal or State law from any
9 other person for the difference in cost.

10 “(4) JUDICIAL REVIEW.—An order that is is-
11 sued under section 106 by a delegated State with re-
12 spect to a delegated facility shall be reviewable only
13 in United States district court under section 113.

14 “(5) DELISTING OF NATIONAL PRIORITIES LIST
15 FACILITIES.—

16 “(A) DELISTING.—After notice and an op-
17 portunity for public comment, a delegated State
18 may remove from the National Priorities List
19 all or part of a delegated facility—

20 “(i) if the State makes a finding that
21 no further action is needed to be taken at
22 the facility (or part of the facility) under
23 any applicable law to protect human health
24 and the environment consistent with sec-
25 tion 121(a) (1) and (2);

“(ii) with the concurrence of the potentially responsible parties, if the State has an enforceable agreement to perform all required remedial action and operation and maintenance for the facility or if the cleanup will proceed at the facility under section 3004 (u) or (v) of the Solid Waste Disposal Act (42 U.S.C. 6924 (u), (v)); or

“(iii) if the State is a comprehensive delegation State with respect to the facility.

“(B) EFFECT OF DELISTING.—A delisting under subparagraph (A) (ii) or (iii) shall not affect—

“(i) the authority or responsibility of the State to complete remedial action and operation and maintenance;

“(ii) the eligibility of the State for funding under this Act;

“(iii) notwithstanding the limitation on section 104(c)(1), the authority of the Administrator to make expenditures from the Fund relating to the facility; or

“(iv) the enforceability of any consent order or decree relating to the facility.

1 “(C) NO RELISTING.—

2 “(i) IN GENERAL.—Except as pro-
3 vided in clause (ii), the Administrator shall
4 not relist on the National Priorities List a
5 facility or part of a facility that has been
6 removed from the National Priorities List
7 under subparagraph (A).

8 “(ii) CLEANUP NOT COMPLETED.—
9 The Administrator may relist a facility or
10 part of a facility that has been removed
11 from the National Priorities List under
12 subparagraph (A) if cleanup is not com-
13 pleted in accordance with the enforceable
14 agreement under subparagraph (A)(ii).

15 “(6) COST RECOVERY.—

16 “(A) RECOVERY BY A DELEGATED
17 STATE.—Of the amount of any response costs
18 recovered from a responsible party by a dele-
19 gated State for a delegated facility under sec-
20 tion 107—

21 “(i) 25 percent of the amount of any
22 Federal response cost recovered with re-
23 spect to a facility, plus an amount equal to
24 the amount of response costs incurred by

the State with respect to the facility, may
be retained by the State; and

“(ii) the remainder shall be deposited
in the Hazardous Substances Superfund
established under subchapter A of chapter
98 of the Internal Revenue Code of 1986.

“(B) RECOVERY BY THE ADMINIS-
TRATOR.—

“(i) IN GENERAL.—The Administrator
may take action under section 107 to re-
cover response costs from a responsible
party for a delegated facility if—

“(I) the delegated State notifies
the Administrator in writing that the
delegated State does not intend to
pursue action for recovery of response
costs under section 107 against the
responsible party; or

“(II) the delegated State fails to
take action to recover response costs
within a reasonable time in light of
applicable statutes of limitation.

“(ii) NOTICE.—If the Administrator
proposes to commence an action for recov-
ery of response costs under section 107,

1 the Administrator shall give the State writ-
2 ten notice and allow the State at least 90
3 days after receipt of the notice to com-
4 mence the action.

5 “(iii) NO FURTHER ACTION.—If the
6 Administrator takes action against a po-
7 tentially responsible party under section
8 107 relating to a release from a delegated
9 facility, the delegated State may not take
10 any other action for recovery of response
11 costs relating to that release under this
12 Act or any other Federal or State law.

13 “(e) FEDERAL RESPONSIBILITIES AND AUTHORI-
14 TIES.—

15 “(1) REVIEW USE OF FUNDS.—

16 “(A) IN GENERAL.—The Administrator
17 shall review the certification submitted by the
18 Governor under subsection (f)(8) not later than
19 120 days after the date of its submission.

20 “(B) FINDING OF USE OF FUNDS INCON-
21 SISTENT WITH THIS ACT.—If the Administrator
22 finds that funds were used in a manner that is
23 inconsistent with this Act, the Administrator
24 shall notify the Governor in writing not later

1 than 120 days after receiving the Governor's
2 certification.

3 “(C) EXPLANATION.—Not later than 30
4 days after receiving a notice under subpara-
5 graph (B), the Governor shall—

6 “(i) explain why the Administrator's
7 finding is in error; or

8 “(ii) explain to the Administrator's
9 satisfaction how any misapplication or mis-
10 use of funds will be corrected.

11 “(D) FAILURE TO EXPLAIN.—If the Gov-
12 ernor fails to make an explanation under sub-
13 paragraph (C) to the Administrator's satisfac-
14 tion, the Administrator may request reimburse-
15 ment of such amount of funds as the Adminis-
16 trator finds was misapplied or misused.

17 “(E) REPAYMENT OF FUNDS.—If the Ad-
18 ministrator fails to obtain reimbursement from
19 the State within a reasonable period of time,
20 the Administrator may, after 30 days' notice to
21 the State, bring a civil action in United States
22 district court to recover from the delegated
23 State any funds that were advanced for a pur-
24 pose or were used for a purpose or in a manner
25 that is inconsistent with this Act.

1 “(2) WITHDRAWAL OF DELEGATION OF AU-
2 THORITY.—

3 “(A) DELEGATED STATES.—If at any time
4 the Administrator finds that contrary to a cer-
5 tification made under subsection (c)(2), a dele-
6 gated State—

7 “(i) lacks the required financial and
8 personnel resources, organization, or exper-
9 tise to administer and enforce the re-
10 quested delegated authorities;

11 “(ii) does not have adequate legal au-
12 thority to request and accept delegation; or

13 “(iii) is failing to materially carry out
14 the State’s delegated authorities,

15 the Administrator may withdraw a delegation of
16 authority with respect to a delegated facility
17 after providing notice and opportunity to cor-
18 rect deficiencies under subparagraph (D).

19 “(B) STATES WITH LIMITED DELEGATIONS
20 OF AUTHORITY.—If the Administrator finds
21 that a State to which a limited delegation of au-
22 thority was made under subsection (c)(5) has
23 materially breached the delegation agreement,
24 the Administrator may withdraw the delegation

1 after providing notice and opportunity to cor-
2 rect deficiencies under subparagraph (D).

3 “(C) NOTICE AND OPPORTUNITY TO COR-
4 RECT.—If the Administrator proposes to with-
5 draw a delegation of authority for any or all
6 delegated facilities, the Administrator shall give
7 the State written notice and allow the State at
8 least 90 days after the date of receipt of the no-
9 tice to correct the deficiencies cited in the no-
10 tice.

11 “(D) FAILURE TO CORRECT.—If the Ad-
12 ministrator finds that the deficiencies have not
13 been corrected within the time specified in a no-
14 tice under subparagraph (C), the Administrator
15 may withdraw delegation of authority after pro-
16 viding public notice and opportunity for com-
17 ment.

18 “(E) JUDICIAL REVIEW.—A decision of the
19 Administrator to withdraw a delegation of au-
20 thority shall be subject to judicial review under
21 section 113(b).

22 “(3) RULE OF CONSTRUCTION.—Nothing in
23 this section shall be construed to affect the authority
24 of the Administrator under this Act to—

1 “(A) take a response action at a facility
 2 listed on the National Priorities List in a State
 3 to which a delegation of authority has not been
 4 made under this section or at a facility not in-
 5 cluded in a delegation of authority; or

6 “(B) perform a delegable authority with
 7 respect to a facility that is not included among
 8 the authorities delegated to a State with respect
 9 to the facility.

10 “(4) RETAINED AUTHORITY.—

11 “(A) NOTICE.—Before performing an
 12 emergency removal action under section 104 at
 13 a delegated facility, the Administrator shall no-
 14 tify the delegated States of the Administrator’s
 15 intention to perform the removal.

16 “(B) STATE ACTION.—If, after receiving a
 17 notice under subparagraph (A), the delegated
 18 State notifies the Administrator within 48
 19 hours that the State intends to take action to
 20 perform an emergency removal at the delegated
 21 facility, the Administrator shall not perform the
 22 emergency removal action unless the Adminis-
 23 trator determines that the delegated State has
 24 failed to act within a reasonable period of time
 25 to perform the emergency removal.

1 “(C) IMMEDIATE AND SIGNIFICANT DAN-
 2 GER.—If the Administrator finds that an emer-
 3 gency at a delegated facility poses an immediate
 4 and significant danger to human health or the
 5 environment, the Administrator shall not be re-
 6 quired to provide notice under subparagraph
 7 (A).

8 “(5) PROHIBITED ACTIONS.—Except as pro-
 9 vided in subsections (d)(6)(B), (e)(4), and (g) or ex-
 10 cept with the concurrence of the delegated State, the
 11 President, the Administrator, and the Attorney Gen-
 12 eral shall not take any action under section 104,
 13 106, 107, 109, 121, or 122 in performance of a del-
 14 egable authority that has been delegated to a State
 15 with respect to a delegated facility.

16 “(f) FUNDING.—

17 “(1) IN GENERAL.—The Administrator shall
 18 provide grants to or enter into contracts or coopera-
 19 tive agreements with delegated States to carry out
 20 this section.

21 “(2) NO CLAIM AGAINST FUND.—Notwithstand-
 22 ing any other law, funds to be granted under this
 23 subsection shall not constitute a claim against the
 24 Fund or the United States.

1 “(3) INSUFFICIENT FUNDS AVAILABLE.—If
 2 funds are unavailable in any fiscal year to satisfy all
 3 commitments made under this section by the Admin-
 4 istrator, the Administrator shall have sole authority
 5 and discretion to establish priorities and to delay
 6 payments until funds are available.

7 “(4) DETERMINATION OF COSTS ON A FACIL-
 8 ITY-SPECIFIC BASIS.—The Administrator shall—

9 “(A) determine—

10 “(i) the delegable authorities the costs
 11 of performing which it is practicable to de-
 12 termine on a facility-specific basis; and

13 “(ii) the delegable authorities the
 14 costs of performing which it is not prac-
 15 ticable to determine on a facility-specific
 16 basis; and

17 “(B) publish a list describing the delegable
 18 authorities in each category.

19 “(5) FACILITY-SPECIFIC GRANTS.—The costs
 20 described in paragraph (4)(A)(ii) shall be funded as
 21 such costs arise with respect to each delegated facil-
 22 ity.

23 “(6) NONFACILITY-SPECIFIC GRANTS.—

1 “(A) IN GENERAL.—The costs described in
2 paragraph (4)(A)(ii) shall be funded through
3 nonfacility-specific grants under this paragraph.

4 “(B) FORMULA.—The Administrator shall
5 establish a formula under which funds available
6 for nonfacility-specific grants shall be allocated
7 among the delegated States, taking into consid-
8 eration—

9 “(i) the cost of administering the dele-
10 gated authority;

11 “(ii) the number of sites for which the
12 State has been delegated authority;

13 “(iii) the types of activities for which
14 the State has been delegated authority;

15 “(iv) the number of facilities within
16 the State that are listed on the National
17 Priorities List or are delegated facilities
18 under section 130(d)(5);

19 “(v) the number of other high priority
20 facilities within the State;

21 “(vi) the need for the development of
22 the State program;

23 “(vii) the need for additional person-
24 nel;

1 “(viii) the amount of resources avail-
2 able through State programs for the clean-
3 up of contaminated sites; and

4 “(ix) the benefit to human health and
5 the environment of providing the funding.

6 “(7) PERMITTED USE OF GRANT FUNDS.—A
7 delegated State may use grant funds, in accordance
8 with this Act and the National Contingency Plan, to
9 take any action or perform any duty necessary to
10 implement the authority delegated to the State
11 under this section.

12 “(8) COST SHARE.—

13 “(A) ASSURANCE.—A delegated State to
14 which a grant is made under this subsection
15 shall provide an assurance that the State will
16 pay any amount required under section
17 104(c)(3).

18 “(B) PROHIBITED USE OF GRANT
19 FUNDS.—A delegated State to which a grant is
20 made under this subsection may not use grant
21 funds to pay any amount required under section
22 104(c)(3).

23 “(9) CERTIFICATION OF USE OF FUNDS.—

1 “(A) IN GENERAL.—Not later than 1 year
 2 after the date on which a delegated State re-
 3 ceives funds under this subsection, and annually
 4 thereafter, the Governor of the State shall sub-
 5 mit to the Administrator—

6 “(i) a certification that the State has
 7 used the funds in accordance with the re-
 8 quirements of this Act and the National
 9 Contingency Plan; and

10 “(ii) information describing the man-
 11 ner in which the State used the funds.

12 “(B) REGULATIONS.—Not later than 1
 13 year after the date of enactment of this section,
 14 the Administrator shall issue a regulation de-
 15 scribing with particularity the information that
 16 a State shall be required to provide under sub-
 17 paragraph (A)(ii).

18 “(g) COOPERATIVE AGREEMENTS.—Nothing in this
 19 section shall affect the authority of the Administrator
 20 under section 104(d)(1) to enter into a cooperative agree-
 21 ment with a State, a political subdivision of a State, or
 22 an Indian tribe to carry out actions under section 104.”.

23 (b) STATE COST SHARE.—Section 104(c) of the
 24 Comprehensive Environmental Response, Compensation,

1 and Liability Act of 1980 (42 U.S.C. 9604(c)) is amend-
 2 ed—

3 (1) by striking “(c)(1) Unless” and inserting
 4 the following:

5 “(c) MISCELLANEOUS LIMITATIONS AND REQUIRE-
 6 MENTS.—

7 “(1) CONTINUANCE OF OBLIGATIONS FROM
 8 FUND.—Unless”;

9 (2) by striking “(2) The President” and insert-
 10 ing the following:

11 “(2) CONSULTATION.—The President”; and

12 (3) by striking paragraph (3) and inserting the
 13 following:

14 “(3) STATE COST SHARE.—

15 “(A) IN GENERAL.—The Administrator
 16 shall not provide any remedial action under this
 17 section unless the State in which the release oc-
 18 curs first enters into a contract or cooperative
 19 agreement with the Administrator providing as-
 20 surances deemed adequate by the Administrator
 21 that the State will pay, in cash or through in-
 22 kind contributions, a specified percentage of the
 23 costs of the remedial action and operation and
 24 maintenance costs.

1 “(B) ACTIVITIES WITH RESPECT TO
2 WHICH STATE COST SHARE IS REQUIRED.—No
3 State cost share shall be required except for re-
4 medial actions under section 104.

5 “(C) SPECIFIED PERCENTAGE.—

6 “(i) IN GENERAL.—The specified per-
7 centage of costs that a State shall be re-
8 quired to share shall be the lower of 10
9 percent or the percentage determined
10 under clause (ii).

11 “(ii) MAXIMUM IN ACCORDANCE WITH
12 LAW PRIOR TO 1996 AMENDMENTS.—

13 “(I) On petition by a State, the
14 Director of the Office of Management
15 and Budget (referred to in this clause
16 as the ‘Director’), after providing pub-
17 lic notice and opportunity for com-
18 ment, shall establish a cost share per-
19 centage, which shall be uniform for all
20 facilities in the State, at the percent-
21 age rate at which the total amount of
22 anticipated payments by the State
23 under the cost share for all facilities
24 in the State for which a cost share is
25 required most closely approximates

1 the total amount of estimated cost
2 share payments by the State for facili-
3 ties that would have been required
4 under cost share requirements that
5 were applicable prior to the date of
6 enactment of this subparagraph, ad-
7 justed to reflect the extent to which
8 the State's ability to recover costs
9 under this Act were reduced by reason
10 of enactment of amendments to this
11 Act by the Superfund Cleanup Accel-
12 eration Act of 1997.

13 “(II) The Director may adjust a
14 State's cost share under this clause
15 not more frequently than every 3
16 years.

17 “(D) INDIAN TRIBES.—In the case of re-
18 medial action to be taken on land or water held
19 by an Indian Tribe, held by the United States
20 in trust for Indians, held by a member of an In-
21 dian Tribe (if the land or water is subject to a
22 trust restriction on alienation), or otherwise
23 within the borders of an Indian reservation, the
24 requirements of this paragraph shall not
25 apply.”.

1 (c) USES OF FUND.—Section 111(a) of the Com-
2 prehensive Environmental Response, Compensation, and
3 Liability Act of 1980 (42 U.S.C. 9611(a)) is amended by
4 inserting after paragraph (6) the following:

5 “(7) GRANTS TO DELEGATED STATES.—Making
6 a grant to a delegated State under section 130(f).”.

7 (d) RELATIONSHIP TO OTHER LAWS.—

8 (1) IN GENERAL.—Section 114(b) of the Com-
9 prehensive Environmental Response, Compensation,
10 and Liability Act of 1980 (42 U.S.C. 9614(b)) is
11 amended by striking “removal” each place it appears
12 and inserting “response”.

13 (2) CONFORMING AMENDMENT.—Section
14 101(37)(B) of the Comprehensive Environmental
15 Response, Compensation, and Liability Act of 1980
16 (42 U.S.C. 9601(37)(B)) is amended by striking
17 “section 114(c)” and inserting “section 114(b)”.

TITLE III—COMMUNITY PARTICIPATION

SEC. 301. COMMUNITY RESPONSE ORGANIZATIONS; TECHNICAL ASSISTANCE GRANTS; IMPROVEMENT OF PUBLIC PARTICIPATION IN THE SUPERFUND DECISIONMAKING PROCESS.

(a) AMENDMENT.—Section 117 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9617) is amended by striking subsection (e) and inserting the following:

“(e) COMMUNITY RESPONSE ORGANIZATIONS.—

“(1) ESTABLISHMENT.—The Administrator shall create a community response organization for a facility that is listed or proposed for listing on the National Priorities List—

“(A) if the Administrator determines that a representative public forum will be helpful in promoting direct, regular, and meaningful consultation among persons interested in remedial action at the facility; or

“(B) at the request of—

“(i) 50 individuals residing in, or at least 20 percent of the population of, the area in which the facility is located;

1 “(ii) a representative group of the po-
2 tentially responsible parties; or

3 “(iii) any local governmental entity
4 with jurisdiction over the facility.

5 “(2) RESPONSIBILITIES.—A community re-
6 sponse organization shall—

7 “(A) solicit the views of the local commu-
8 nity on various issues affecting the development
9 and implementation of remedial actions at the
10 facility;

11 “(B) serve as a conduit of information to
12 and from the community to appropriate Fed-
13 eral, State, and local agencies and potentially
14 responsible parties;

15 “(C) serve as a representative of the local
16 community during the remedial action planning
17 and implementation process; and

18 “(D) provide reasonable notice of and op-
19 portunities to participate in the meetings and
20 other activities of the community response orga-
21 nization.

22 “(3) ACCESS TO DOCUMENTS.—The Adminis-
23 trator shall provide a community response organiza-
24 tion access to documents in possession of the Fed-
25 eral Government regarding response actions at the

1 facility that do not relate to liability and are not
2 protected from disclosure as confidential business in-
3 formation.

4 “(4) COMMUNITY RESPONSE ORGANIZATION
5 INPUT.—

6 “(A) CONSULTATION.—The Administrator
7 (or if the remedial action plan is being prepared
8 or implemented by a party other than the Ad-
9 ministrator, the other party) shall—

10 “(i) consult with the community re-
11 sponse organization in developing and im-
12 plementing the remedial action plan; and

13 “(ii) keep the community response or-
14 ganization informed of progress in the de-
15 velopment and implementation of the re-
16 medial action plan.

17 “(B) TIMELY SUBMISSION OF COM-
18 MENTS.—The community response organization
19 shall provide its comments, information, and
20 recommendations in a timely manner to the Ad-
21 ministrator (and other party).

22 “(C) CONSENSUS.—The community re-
23 sponse organization shall attempt to achieve
24 consensus among its members before providing

1 comments and recommendations to the Admin-
 2 istrator (and other party), but if consensus can-
 3 not be reached, the community response organi-
 4 zation shall report or allow presentation of di-
 5 vergent views.

6 “(5) TECHNICAL ASSISTANCE GRANTS.—

7 “(A) PREFERRED RECIPIENT.—If a com-
 8 munity response organization exists for a facil-
 9 ity, the community response organization shall
 10 be the preferred recipient of a technical assist-
 11 ance grant under subsection (f).

12 “(B) PRIOR AWARD.—If a technical assist-
 13 ance grant concerning a facility has been
 14 awarded prior to establishment of a community
 15 response organization—

16 “(i) the recipient of the grant shall co-
 17 ordinate its activities and share informa-
 18 tion and technical expertise with the com-
 19 munity response organization; and

20 “(ii) 1 person representing the grant
 21 recipient shall serve on the community re-
 22 sponse organization.

23 “(6) MEMBERSHIP.—

1 “(A) NUMBER.—The Administrator shall
2 select not less than 15 nor more than 20 per-
3 sons to serve on a community response organi-
4 zation.

5 “(B) NOTICE.—Before selecting members
6 of the community response organization, the
7 Administrator shall provide a notice of intent to
8 establish a community response organization to
9 persons who reside in the local community.

10 “(C) REPRESENTED GROUPS.—The Ad-
11 ministrator shall, to the extent practicable, ap-
12 point members to the community response orga-
13 nization from each of the following groups of
14 persons:

15 “(i) Persons who reside or own resi-
16 dential property near the facility;

17 “(ii) Persons who, although they may
18 not reside or own property near the facil-
19 ity, may be adversely affected by a release
20 from the facility.

21 “(iii) Persons who are members of the
22 local public health or medical community
23 and are practicing in the community.

24 “(iv) Representatives of Indian tribes
25 or Indian communities that reside or own

1 property near the facility or that may be
2 adversely affected by a release from the fa-
3 cility.

4 “(v) Local representatives of citizen,
5 environmental, or public interest groups
6 with members residing in the community.

7 “(vi) Representatives of local govern-
8 ments, such as city or county governments,
9 or both, and any other governmental unit
10 that regulates land use or land use plan-
11 ning in the vicinity of the facility.

12 “(vii) Members of the local business
13 community.

14 “(D) PROPORTION.—Local residents shall
15 comprise not less than 60 percent of the mem-
16 bership of a community response organization.

17 “(E) PAY.—Members of a community re-
18 sponse organization shall serve without pay.

19 “(7) PARTICIPATION BY GOVERNMENT REP-
20 RESENTATIVES.—Representatives of the Adminis-
21 trator, the Administrator of the Agency for Toxic
22 Substances and Disease Registry, other Federal
23 agencies, and the State, as appropriate, shall partici-
24 pate in community response organization meetings
25 to provide information and technical expertise, but

1 shall not be members of the community response or-
2 ganization.

3 “(8) ADMINISTRATIVE SUPPORT.—The Admin-
4 istrator, to the extent practicable, shall provide ad-
5 ministrative services and meeting facilities for com-
6 munity response organizations.

7 “(9) FACA.—The Federal Advisory Committee
8 Act (5 U.S.C. App.) shall not apply to a community
9 response organization.

10 “(f) TECHNICAL ASSISTANCE GRANTS.—

11 “(1) DEFINITIONS.—In this subsection:

12 “(A) AFFECTED CITIZEN GROUP.—The
13 term ‘affected citizen group’ means a group of
14 2 or more individuals who may be affected by
15 the release or threatened release of a hazardous
16 substance, pollutant, or contaminant at any fa-
17 cility on the State Registry or the National Pri-
18 orities List.

19 “(B) TECHNICAL ASSISTANCE GRANT.—
20 The term ‘technical assistance grant’ means a
21 grant made under paragraph (2).

22 “(2) AUTHORITY.—

1 “(A) IN GENERAL.—In accordance with a
2 regulation issued by the Administrator, the Ad-
3 ministrator may make grants available to af-
4 fected citizen groups.

5 “(B) AVAILABILITY OF APPLICATION
6 PROCESS.—To ensure that the application proc-
7 ess for a technical assistance grant is available
8 to all affected citizen groups, the Administrator
9 shall periodically review the process and, based
10 on the review, implement appropriate changes
11 to improve availability.

12 “(3) SPECIAL RULES.—

13 “(A) NO MATCHING CONTRIBUTION.—No
14 matching contribution shall be required for a
15 technical assistance grant.

16 “(B) AVAILABILITY IN ADVANCE.—The
17 Administrator shall make all or a portion (but
18 not less than \$5,000 or 10 percent of the grant
19 amount, whichever is greater) of the grant
20 amount available to a grant recipient in ad-
21 vance of the total expenditures to be covered by
22 the grant.

23 “(4) LIMIT PER FACILITY.—

24 “(A) 1 GRANT PER FACILITY.—Not more
25 than 1 technical assistance grant may be made

1 with respect to a single facility, but the grant
2 may be renewed to facilitate public participation
3 at all stages of response action.

4 “(B) DURATION.—The Administrator shall
5 set a limit by regulation on the number of years
6 for which a technical assistance grant may be
7 made available based on the duration, type, and
8 extent of response action at a facility.

9 “(5) AVAILABILITY FOR FACILITIES NOT YET
10 LISTED.—Subject to paragraph (6), 1 or more tech-
11 nical assistance grants shall be made available to af-
12 fected citizen groups in communities containing fa-
13 cilities on the State Registry as of the date on which
14 the grant is awarded.

15 “(6) FUNDING LIMIT.—

16 “(A) PERCENTAGE OF TOTAL APPROPRIA-
17 TIONS.—Not more than 2 percent of the funds
18 made available to carry out this Act for a fiscal
19 year may be used to make technical assistance
20 grants.

21 “(B) ALLOCATION BETWEEN LISTED AND
22 UNLISTED FACILITIES.—Not more than the
23 portion of funds equal to $\frac{1}{8}$ of the total amount
24 of funds used to make technical assistance

1 grants for a fiscal year may be used for tech-
2 nical assistance grants with respect to facilities
3 not listed on the National Priorities List.

4 “(7) FUNDING AMOUNT.—

5 “(A) IN GENERAL.—Except as provided in
6 subparagraph (B), the amount of a technical
7 assistance grant may not exceed \$50,000 for a
8 single grant recipient.

9 “(B) INCREASE.—The Administrator may
10 increase the amount of a technical assistance
11 grant, or renew a previous technical assistance
12 grant, up to a total grant amount not exceeding
13 \$100,000, to reflect the complexity of the re-
14 sponse action, the nature and extent of con-
15 tamination at the facility, the level of facility
16 activity, projected total needs as requested by
17 the grant recipient, the size and diversity of the
18 affected population, and the ability of the grant
19 recipient to identify and raise funds from other
20 non-Federal sources.

21 “(8) USE OF TECHNICAL ASSISTANCE
22 GRANTS.—

1 “(A) PERMITTED USE.—A technical assist-
 2 ance grant may be used to obtain technical as-
 3 sistance in interpreting information with regard
 4 to—

5 “(i) the nature of the hazardous sub-
 6 stances located at a facility;

7 “(ii) the work plan;

8 “(iii) the facility evaluation;

9 “(iv) a proposed remedial action plan,
 10 a remedial action plan, and a final reme-
 11 dial design for a facility;

12 “(v) response actions carried out at
 13 the facility; and

14 “(vi) operation and maintenance ac-
 15 tivities at the facility.

16 “(B) PROHIBITED USE.—A technical as-
 17 sistance grant may not be used for the purpose
 18 of collecting field sampling data.

19 “(9) GRANT GUIDELINES.—

20 “(A) IN GENERAL.—Not later than 90
 21 days after the date of enactment of this para-
 22 graph, the Administrator shall develop and pub-
 23 lish guidelines concerning the management of
 24 technical assistance grants by grant recipients.

1 “(B) HIRING OF EXPERTS.—A recipient of
 2 a technical assistance grant that hires technical
 3 experts and other experts shall act in accord-
 4 ance with the guidelines under subparagraph
 5 (A).

6 “(g) IMPROVEMENT OF PUBLIC PARTICIPATION IN
 7 THE SUPERFUND DECISIONMAKING PROCESS.—

8 “(1) IN GENERAL.—

9 “(A) MEETINGS AND NOTICE.—In order to
 10 provide an opportunity for meaningful public
 11 participation in every significant phase of re-
 12 sponse activities under this Act, the Adminis-
 13 trator shall provide the opportunity for, and
 14 publish notice of, public meetings before or dur-
 15 ing performance of—

16 “(i) a facility evaluation, as appro-
 17 priate;

18 “(ii) announcement of a proposed re-
 19 medial action plan; and

20 “(iii) completion of a final remedial
 21 design.

22 “(B) INFORMATION.—A public meeting
 23 under subparagraph (A) shall be designed to
 24 obtain information from the community, and
 25 disseminate information to the community, with

1 respect to a facility concerning the Administra-
2 tor's facility activities and pending decisions.

3 “(2) PARTICIPANTS AND SUBJECT.—The Ad-
4 ministrator shall provide reasonable notice of an op-
5 portunity for public participation in meetings in
6 which—

7 “(A) the participants include Federal offi-
8 cials (or State officials, if the State is conduct-
9 ing response actions under a delegated or au-
10 thorized program or through facility referral)
11 with authority to make significant decisions af-
12 fecting a response action, and other persons
13 (unless all of such other persons are coregu-
14 lators that are not potentially responsible par-
15 ties or are government contractors); and

16 “(B) the subject of the meeting involves
17 discussions directly affecting—

18 “(i) a legally enforceable work plan
19 document, or any significant amendment
20 to the document, for a removal, facility
21 evaluation, proposed remedial action plan,
22 final remedial design, or remedial action
23 for a facility on the National Priorities
24 List; or

1 “(ii) the final record of information on
2 which the Administrator will base a hazard
3 ranking system score for a facility.

4 “(3) LIMITATION.—Nothing in this subsection
5 shall be construed—

6 “(A) to provide for public participation in
7 or otherwise affect any negotiation, meeting, or
8 other discussion that concerns only the poten-
9 tial liability or settlement of potential liability
10 of any person, whether prior to or following the
11 commencement of litigation or administrative
12 enforcement action;

13 “(B) to provide for public participation in
14 or otherwise affect any negotiation, meeting, or
15 other discussion that is attended only by rep-
16 resentatives of the United States (or of a de-
17 partment, agency, or instrumentality of the
18 United States) with attorneys representing the
19 United States (or of a department, agency, or
20 instrumentality of the United States); or

21 “(C) to waive, compromise, or affect any
22 privilege that may be applicable to a commu-
23 nication related to an activity described in sub-
24 paragraph (A) or (B).

25 “(4) EVALUATION.—

1 “(A) IN GENERAL.—To the extent prac-
2 ticable, before and during the facility evalua-
3 tion, the Administrator shall solicit and evalu-
4 ate concerns, interests, and information from
5 the community.

6 “(B) PROCEDURE.—An evaluation under
7 subparagraph (A) shall include, as appro-
8 priate—

9 “(i) face-to-face community surveys to
10 identify the location of private drinking
11 water wells, historic and current or poten-
12 tial use of water, and other environmental
13 resources in the community;

14 “(ii) a public meeting;

15 “(iii) written responses to significant
16 concerns; and

17 “(iv) other appropriate participatory
18 activities.

19 “(5) VIEWS AND PREFERENCES.—

20 “(A) SOLICITATION.—During the facility
21 evaluation, the Administrator (or other person
22 performing the facility evaluation) shall solicit
23 the views and preferences of the community on
24 the remediation and disposition of hazardous

1 substances or pollutants or contaminants at the
2 facility.

3 “(B) CONSIDERATION.—The views and
4 preferences of the community shall be described
5 in the facility evaluation and considered in the
6 screening of remedial alternatives for the facil-
7 ity.

8 “(6) ALTERNATIVES.—Members of the commu-
9 nity may propose remedial action alternatives, and
10 the Administrator shall consider such alternatives in
11 the same manner as the Administrator considers al-
12 ternatives proposed by potentially responsible par-
13 ties.

14 “(7) INFORMATION.—

15 “(A) THE COMMUNITY.—The Adminis-
16 trator, with the assistance of the community re-
17 sponse organization under subsection (g) if
18 there is one, shall provide information to the
19 community and seek comment from the commu-
20 nity throughout all significant phases of the re-
21 sponse action at the facility.

22 “(B) TECHNICAL STAFF.—The Adminis-
23 trator shall ensure that information gathered

1 from the community during community out-
2 reach efforts reaches appropriate technical staff
3 in a timely and effective manner.

4 “(C) RESPONSES.—The Administrator
5 shall ensure that reasonable written or other
6 appropriate responses will be made to such in-
7 formation.

8 “(8) NONPRIVILEGED INFORMATION.—
9 Throughout all phases of response action at a facil-
10 ity, the Administrator shall make all nonprivileged
11 information relating to a facility available to the
12 public for inspection and copying without the need
13 to file a formal request, subject to reasonable service
14 charges as appropriate.

15 “(9) PRESENTATION.—

16 “(A) DOCUMENTS.—

17 “(i) IN GENERAL.—The Adminis-
18 trator, in carrying out responsibilities
19 under this Act, shall ensure that the pres-
20 entation of information on risk is complete
21 and informative.

22 “(ii) RISK.—To the extent feasible,
23 documents prepared by the Administrator
24 and made available to the public that pur-
25 port to describe the degree of risk to

1 human health shall be consistent with the
2 risk communication principles outlined in
3 section 131(c).

4 “(B) COMPARISONS.—The Administrator,
5 in carrying out responsibilities under this Act,
6 shall provide comparisons of the level of risk
7 from hazardous substances found at the facility
8 to comparable levels of risk from those hazard-
9 ous substances ordinarily encountered by the
10 general public through other sources of expo-
11 sure.

12 “(10) REQUIREMENTS.—

13 “(A) LENGTHY REMOVAL ACTIONS.—Not-
14 withstanding any other provision of this sub-
15 section, in the case of a removal action taken
16 in accordance with section 104 that is expected
17 to require more than 180 days to complete, and
18 in any case in which implementation of a re-
19 moval action is expected to obviate or that in
20 fact obviates the need to conduct a long-term
21 remedial action—

22 “(i) the Administrator shall, to the
23 maximum extent practicable, allow for pub-
24 lic participation consistent with paragraph
25 (1); and

1 “(ii) the removal action shall achieve
 2 the goals of protecting human health and
 3 the environment in accordance with section
 4 121(a)(1).

5 “(B) OTHER REMOVAL ACTIONS.—In the
 6 case of all other removal actions, the Adminis-
 7 trator may provide the community with notice
 8 of the anticipated removal action and a public
 9 comment period, as appropriate.”.

10 (b) ISSUANCE OF GUIDELINES.—The Administrator
 11 of the Environmental Protection Agency shall issue guide-
 12 lines under section 117(e)(9) of the Comprehensive Envi-
 13 ronmental Response, Compensation, and Liability Act of
 14 1980, as added by subsection (a), not later than 90 days
 15 after the date of enactment of this Act.

16 **TITLE IV—SELECTION OF** 17 **REMEDIAL ACTIONS**

18 **SEC. 401. DEFINITIONS.**

19 Section 101 of the Comprehensive Environmental Re-
 20 sponse, Compensation, and Liability Act of 1980 (42
 21 U.S.C. 9601) (as amended by section 105(a)) is amended
 22 by adding at the end the following:

23 “(41) ACTUAL OR PLANNED OR REASONABLY
 24 ANTICIPATED FUTURE USE OF THE LAND AND
 25 WATER RESOURCES.—The term ‘actual or planned

1 or reasonably anticipated future use of the land and
2 water resources’ means—

3 “(A) the actual use of the land, surface
4 water, and ground water at a facility on the
5 date of submittal of the proposed remedial ac-
6 tion plan; and

7 “(B)(i) with respect to land—

8 “(I) the use of land that is authorized
9 by the zoning or land use decisions for-
10 mally adopted, at or prior to the time of
11 the initiation of the facility evaluation, by
12 the local land use planning authority for a
13 facility and the land immediately adjacent
14 to the facility; and

15 “(II) any other reasonably anticipated
16 use that the local land use authority, in
17 consultation with the community response
18 organization (if any), determines to have a
19 substantial probability of occurring based
20 on recent (as of the time of the determina-
21 tion) development patterns in the area in
22 which the facility is located and on popu-
23 lation projections for the area; and

24 “(ii) with respect to water resources, the
25 future use of the surface water and ground

water that is potentially affected by releases from a facility that is reasonably anticipated, by the governmental unit that regulates surface or ground water use or surface or ground water use planning in the vicinity of the facility, on the date of submission of the proposed remedial action plan.

“(42) SUSTAINABILITY.—The term ‘sustainability’, for the purpose of section 121(a)(1)(B)(ii), means the ability of an ecosystem to continue to function within the normal range of its variability absent the effects of a release of a hazardous substance.”.

SEC. 402. SELECTION AND IMPLEMENTATION OF REMEDIAL ACTIONS.

Section 121 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9621) is amended—

(1) by striking the section heading and subsections (a) and (b) and inserting the following:

“SEC. 121. SELECTION AND IMPLEMENTATION OF REMEDIAL ACTIONS.

“(a) GENERAL RULES.—

1 “(1) SELECTION OF COST-EFFECTIVE REME-
2 DIAL ACTION THAT PROTECTS HUMAN HEALTH AND
3 THE ENVIRONMENT.—

4 “(A) IN GENERAL.—The Administrator
5 shall select a cost-effective remedial action that
6 achieves the goals of protecting human health
7 and the environment as stated in subparagraph
8 (B), and complies with other applicable Federal
9 and State laws in accordance with subpara-
10 graph (C) on the basis of a facility-specific risk
11 evaluation in accordance with section 131 and
12 in accordance with the criteria stated in sub-
13 paragraph (D) and the requirements of para-
14 graph (2).

15 “(B) GOALS OF PROTECTING HUMAN
16 HEALTH AND THE ENVIRONMENT.—

17 “(i) PROTECTION OF HUMAN
18 HEALTH.—A remedial action shall be con-
19 sidered to protect human health if, consid-
20 ering the expected exposures associated
21 with the actual or planned or reasonably
22 anticipated future use of the land and
23 water resources and on the basis of a facil-
24 ity-specific risk evaluation in accordance

1 with section 131, the remedial action
2 achieves a residual risk—

3 “(I) from exposure to nonthresh-
4 old carcinogenic hazardous sub-
5 stances, pollutants, or contaminants
6 such that cumulative lifetime addi-
7 tional cancer from exposure to haz-
8 ardous substances from releases at
9 the facility range from 10^{-4} to 10^{-6}
10 for the affected population; and

11 “(II) from exposure to threshold
12 carcinogenic and noncarcinogenic haz-
13 ardous substances, pollutants, or con-
14 taminants at the facility, that does
15 not exceed a hazard index of 1.

16 “(ii) PROTECTION OF THE ENVIRON-
17 MENT.—A remedial action shall be consid-
18 ered to be protective of the environment if
19 the remedial action—

20 “(I) protects ecosystems from
21 significant threats to their sustain-
22 ability arising from exposure to re-
23 leases of hazardous substances at a
24 site; and

1 “(II) does not cause a greater
 2 threat to the sustainability of
 3 ecosystems than a release of a hazard-
 4 ous substance.

5 “(iii) PROTECTION OF GROUND
 6 WATER.—A remedial action shall prevent
 7 or eliminate any actual human ingestion of
 8 drinking water containing any hazardous
 9 substance from the release at levels—

10 “(I) in excess of the maximum
 11 contaminant level established under
 12 the Safe Drinking Water Act (42
 13 U.S.C. 300f et seq.); or

14 “(II) if no such maximum con-
 15 taminant level has been established
 16 for the hazardous substance, at levels
 17 that meet the goals for protection of
 18 human health under clause (i).

19 “(C) COMPLIANCE WITH FEDERAL AND
 20 STATE LAWS.—

21 “(i) SUBSTANTIVE REQUIREMENTS.—

22 “(I) IN GENERAL.—Subject to
 23 clause (iii) and subparagraphs (A)
 24 and (D) and paragraph (2), a reme-
 25 dial action shall—

1 “(aa) comply with the sub-
2 stantive requirements of all pro-
3 mulgated standards, require-
4 ments, criteria, and limitations
5 under each Federal law and each
6 State law relating to the environ-
7 ment or to the siting of facilities
8 (including a State law that im-
9 poses a more stringent standard,
10 requirement, criterion, or limita-
11 tion than Federal law) that is ap-
12 plicable to the conduct or oper-
13 ation of the remedial action or to
14 determination of the level of
15 cleanup for remedial actions; and

16 “(bb) comply with or attain
17 any other promulgated standard,
18 requirement, criterion, or limita-
19 tion under any State law relating
20 to the environment or siting of
21 facilities, as determined by the
22 State, after the date of enact-
23 ment of the Superfund Cleanup
24 Acceleration Act of 1997,
25 through a rulemaking procedure

1 that includes public notice, com-
2 ment, and written response com-
3 ment, and opportunity for judi-
4 cial review, but only if the State
5 demonstrates that the standard,
6 requirement, criterion, or limita-
7 tion is of general applicability
8 and is consistently applied to re-
9 medial actions under State law.

10 “(II) IDENTIFICATION OF FACILI-
11 TIES.—Compliance with a State
12 standard, requirement, criterion, or
13 limitation described in subclause (I)
14 shall be required at a facility only if
15 the standard, requirement, criterion,
16 or limitation has been identified by
17 the State to the Administrator in a
18 timely manner as being applicable to
19 the facility.

20 “(III) PUBLISHED LISTS.—Each
21 State shall publish a comprehensive
22 list of the standards, requirements,
23 criteria, and limitations that the State
24 may apply to remedial actions under

1 this Act, and shall revise the list peri-
2 odically, as requested by the Adminis-
3 trator.

4 “(IV) CONTAMINATED MEDIA.—

5 Compliance with this clause shall not
6 be required with respect to return, re-
7 placement, or disposal of contami-
8 nated media or residuals of contami-
9 nated media into the same media in
10 or very near then-existing areas of
11 contamination onsite at a facility.

12 “(ii) PROCEDURAL REQUIREMENTS.—

13 Procedural requirements of Federal and
14 State standards, requirements, criteria,
15 and limitations (including permitting re-
16 quirements) shall not apply to response ac-
17 tions conducted onsite at a facility.

18 “(iii) WAIVER PROVISIONS.—

19 “(I) DETERMINATION BY THE

20 PRESIDENT.—The Administrator shall
21 evaluate and determine if it is not ap-
22 propriate for a remedial action to at-
23 tain a Federal or State standard, re-
24 quirement, criterion, or limitation as
25 required by clause (i).

“(II) SELECTION OF REMEDIAL

ACTION THAT DOES NOT COMPLY.—

The Administrator may select a remedial action at a facility that meets the requirements of subparagraph (B) but does not comply with or attain a Federal or State standard, requirement, criterion, or limitation described in clause (i) if the Administrator makes any of the following findings:

“(aa) IMPROPER IDENTI-

FICATION.—The standard, requirement, criterion, or limitation, which was improperly identified as an applicable requirement under clause (i)(I)(aa), fails to comply with the rulemaking requirements of clause (i)(I)(bb).

“(bb) PART OF REMEDIAL

ACTION.—The selected remedial action is only part of a total remedial action that will comply with or attain the applicable requirements of clause (i) when the

1 total remedial action is com-
2 pleted.

3 “(cc) GREATER RISK.—
4 Compliance with or attainment of
5 the standard, requirement, cri-
6 terion, or limitation at the facil-
7 ity will result in greater risk to
8 human health or the environment
9 than alternative options.

10 “(dd) TECHNICALLY IM-
11 PRACTICABILITY.—Compliance
12 with or attainment of the stand-
13 ard, requirement, criterion, or
14 limitation is technically imprac-
15 ticable.

16 “(ee) EQUIVALENT TO
17 STANDARD OF PERFORMANCE.—
18 The selected remedial action will
19 attain a standard of performance
20 that is equivalent to that re-
21 quired under a standard, require-
22 ment, criterion, or limitation de-
23 scribed in clause (i) through use
24 of another approach.

1 “(ff) INCONSISTENT APPLI-
2 CATION.—With respect to a State
3 standard, requirement, criterion,
4 limitation, or level, the State has
5 not consistently applied (or dem-
6 onstrated the intention to apply
7 consistently) the standard, re-
8 quirement, criterion, or limitation
9 or level in similar circumstances
10 to other remedial actions in the
11 State.

12 “(gg) BALANCE.—In the
13 case of a remedial action to be
14 undertaken under section 104 or
15 136 using amounts from the
16 Fund, a selection of a remedial
17 action that complies with or at-
18 tains a standard, requirement,
19 criterion, or limitation described
20 in clause (i) will not provide a
21 balance between the need for pro-
22 tection of public health and wel-
23 fare and the environment at the
24 facility, and the need to make
25 amounts from the Fund available

1 to respond to other facilities that
2 may present a threat to public
3 health or welfare or the environ-
4 ment, taking into consideration
5 the relative immediacy of the
6 threats presented by the various
7 facilities.

8 “(III) PUBLICATION.—The Ad-
9 ministrator shall publish any findings
10 made under subclause (II), including
11 an explanation and appropriate docu-
12 mentation.

13 “(D) REMEDY SELECTION CRITERIA.—In
14 selecting a remedial action from among alter-
15 natives that achieve the goals stated in sub-
16 paragraph (B) pursuant to a facility-specific
17 risk evaluation in accordance with section 131,
18 the Administrator shall balance the following
19 factors, ensuring that no single factor predomi-
20 nates over the others:

21 “(i) The effectiveness of the remedy in
22 protecting human health and the environ-
23 ment.

1 “(ii) The reliability of the remedial ac-
 2 tion in achieving the protectiveness stand-
 3 ards over the long term.

4 “(iii) Any short-term risk to the af-
 5 fected community, those engaged in the re-
 6 medial action effort, and to the environ-
 7 ment posed by the implementation of the
 8 remedial action.

9 “(iv) The acceptability of the remedial
 10 action to the affected community.

11 “(v) The implementability and tech-
 12 nical feasibility of the remedial action from
 13 an engineering perspective.

14 “(vi) The reasonableness of the cost.

15 “(2) TECHNICAL IMPRACTICABILITY.—

16 “(A) MINIMIZATION OF RISK.—If the Ad-
 17 ministrator, after reviewing the remedy selec-
 18 tion criteria stated in paragraph (1)(D), finds
 19 that achieving the goals stated in paragraph
 20 (1)(B) is technically impracticable, the Admin-
 21 istrator shall evaluate remedial measures that
 22 mitigate the risks to human health and the en-
 23 vironment and select a technically practicable
 24 remedial action that will most closely achieve

1 the goals stated in paragraph (1) through cost-
2 effective means.

3 “(B) BASIS FOR FINDING.—A finding of
4 technical impracticability may be made on the
5 basis of a determination, supported by appro-
6 priate documentation, that, at the time at
7 which the finding is made—

8 “(i) there is no known reliable means
9 of achieving at a reasonable cost the goals
10 stated in paragraph (1)(B); and

11 “(ii) it has not been shown that such
12 a means is likely to be developed within a
13 reasonable period of time.

14 “(3) PRESUMPTIVE REMEDIAL ACTIONS.—A re-
15 medial action that implements a presumptive reme-
16 dial action issued under section 132 shall be consid-
17 ered to achieve the goals stated in paragraph (1)(B)
18 and balance adequately the factors stated in para-
19 graph (1)(D).

20 “(4) GROUND WATER.—

21 “(A) IN GENERAL.—The Administrator or
22 the preparer of the remedial action plan shall
23 select a cost effective remedial action for

1 ground water that achieves the goals of protect-
2 ing human health and the environment as stat-
3 ed in paragraph (1)(B) and with the require-
4 ments of this paragraph, and complies with
5 other applicable Federal and State laws in ac-
6 cordance with subparagraph (C) on the basis of
7 a facility-specific risk evaluation in accordance
8 with section 131 and in accordance with the cri-
9 teria stated in subparagraph (D) and the re-
10 quirements of paragraph (2). If appropriate, a
11 remedial action for ground water shall be
12 phased, allowing collection of sufficient data to
13 evaluate the effect of any other remedial action
14 taken at the site and to determine the appro-
15 priate scope of the remedial action.

16 “(B) CONSIDERATIONS FOR GROUND
17 WATER REMEDIAL ACTION.—A decision regard-
18 ing a remedial action for ground water shall
19 take into consideration—

20 “(i) the actual or planned or reason-
21 ably anticipated future use of ground
22 water and the timing of that use; and

23 “(ii) any attenuation or biodegrada-
24 tion that would occur if no remedial action
25 were taken.

1 “(C) UNCONTAMINATED GROUND
2 WATER.—A remedial action shall protect
3 uncontaminated ground water that is suitable
4 for use as drinking water by humans or live-
5 stock if the water is uncontaminated and suit-
6 able for such use at the time of submission of
7 the proposed remedial action plan. A remedial
8 action to protect uncontaminated ground water
9 may utilize natural attenuation (which may in-
10 clude dilution or dispersion, but in conjunction
11 with biodegradation or other levels of attenu-
12 ation necessary to facilitate the remediation of
13 contaminated ground water) so long as the re-
14 medial action does not interfere with the actual
15 or planned or reasonably anticipated future use
16 of the uncontaminated ground water.

17 “(D) CONTAMINATED GROUND WATER.—

18 “(i) IN GENERAL.—In the case of con-
19 taminated ground water for which the ac-
20 tual or planned or reasonably anticipated
21 future use of the resource is as drinking
22 water for humans or livestock, if the Ad-
23 ministrator determines that restoration of
24 some portion of the contaminated ground
25 water to a condition suitable for the use is

1 technically practicable, the Administrator
2 shall seek to restore the ground water to a
3 condition suitable for the use.

4 “(ii) DETERMINATION OF RESTORA-
5 TION PRACTICABILITY.—In making a de-
6 termination regarding the technical prac-
7 ticability of ground water restoration—

8 “(I) there shall be no presump-
9 tion of the technical practicability;
10 and

11 “(II) the determination of tech-
12 nical practicability shall, to the extent
13 practicable, be made on the basis of
14 projections, modeling, or other analy-
15 sis on a site-specific basis without a
16 requirement for the construction or
17 installation and operation of a reme-
18 dial action.

19 “(iii) DETERMINATION OF NEED FOR
20 AND METHODS OF RESTORATION.—In
21 making a determination and selecting a re-
22 medial action regarding restoration of con-
23 taminated ground water the Administrator
24 shall take into account—

1 “(I) the ability to substantially
2 accelerate the availability of ground
3 water for use as drinking water be-
4 yond the rate achievable by natural
5 attenuation; and

6 “(II) the nature and timing of
7 the actual or planned or reasonably
8 anticipated use of such ground water.

9 “(iv) RESTORATION TECHNICALLY IM-
10 PRACTICABLE.—

11 “(I) IN GENERAL.—A remedial
12 action for contaminated ground water
13 having an actual or planned or rea-
14 sonably anticipated future use as a
15 drinking water source for humans or
16 livestock for which attainment of the
17 levels described in paragraph
18 (1)(B)(iii) is technically impracticable
19 shall be selected in accordance with
20 paragraph (1)(D)(2).

21 “(II) NO INGESTION.—Selected
22 remedies may rely on point-of-use
23 treatment or other measures to ensure
24 that there will be no ingestion of
25 drinking water at levels exceeding the

1 requirement of paragraph (1)(B)(iii)
2 (I) or (II).

3 “(III) INCLUSION AS PART OF
4 OPERATION AND MAINTENANCE.—The
5 operation and maintenance of any
6 treatment device installed at the point
7 of use shall be included as part of the
8 operation and maintenance of the
9 remedy.

10 “(E) GROUND WATER NOT SUITABLE FOR
11 USE AS DRINKING WATER.—Notwithstanding
12 any other evaluation or determination of the po-
13 tential suitability of ground water for drinking
14 water use, ground water that is not suitable for
15 use as drinking water by humans or livestock
16 because of naturally occurring conditions, or is
17 so contaminated by the effects of broad-scale
18 human activity unrelated to a specific facility or
19 release that restoration of drinking water qual-
20 ity is technically impracticable or is physically
21 incapable of yielding a quantity of 150 gallons
22 per day of water to a well or spring, shall be
23 considered to be not suitable for use as drinking
24 water.

1 “(F) OTHER GROUND WATER.—Remedial
 2 action for contaminated ground water (other
 3 than ground water having an actual or planned
 4 or reasonably anticipated future use as a drink-
 5 ing water source for humans or livestock) shall
 6 attain levels appropriate for the then-current or
 7 reasonably anticipated future use of the ground
 8 water, or levels appropriate considering the
 9 then-current use of any ground water or surface
 10 water to which the contaminated ground water
 11 discharges.

12 “(5) OTHER CONSIDERATIONS APPLICABLE TO
 13 REMEDIAL ACTIONS.—A remedial action that uses
 14 institutional and engineering controls shall be con-
 15 sidered to be on an equal basis with all other reme-
 16 dial action alternatives.”;

17 (2) by redesignating subsection (c) as sub-
 18 section (b);

19 (3) by striking subsection (d); and

20 (4) by redesignating subsections (e) and (f) as
 21 subsections (c) and (d), respectively.

22 **SEC. 403. REMEDY SELECTION METHODOLOGY.**

23 Title I of the Comprehensive Environmental Re-
 24 sponse, Compensation, and Liability Act of 1980 (42

1 U.S.C. 9601 et seq.) (as amended by section 201(a)) is
2 amended by adding at the end the following:

3 **“SEC. 131. FACILITY-SPECIFIC RISK EVALUATIONS.**

4 “(a) USES.—

5 “(1) IN GENERAL.—A facility-specific risk eval-
6 uation shall be used to—

7 “(A) identify the significant components of
8 potential risk posed by a facility;

9 “(B) screen out potential contaminants,
10 areas, or exposure pathways from further study
11 at a facility;

12 “(C) compare the relative protectiveness of
13 alternative potential remedies proposed for a fa-
14 cility; and

15 “(D) demonstrate that the remedial action
16 selected for a facility is capable of protecting
17 human health and the environment considering
18 the actual or planned or reasonably anticipated
19 future use of the land and water resources.

20 “(2) COMPLIANCE WITH PRINCIPLES.—A facil-
21 ity-specific risk evaluation shall comply with the
22 principles stated in this section to ensure that—

23 “(A) actual or planned or reasonably an-
24 ticipated future use of the land and water re-
25 sources is given appropriate consideration; and

1 “(B) all of the components of the evalua-
2 tion are, to the maximum extent practicable,
3 scientifically objective and inclusive of all rel-
4 evant data.

5 “(b) RISK EVALUATION PRINCIPLES.—A facility-spe-
6 cific risk evaluation shall—

7 “(1) be based on actual information or scientific
8 estimates of exposure considering the actual or
9 planned or reasonably anticipated future use of the
10 land and water resources to the extent that sub-
11 stituting such estimates for those made using stand-
12 ard assumptions alters the basis for decisions to be
13 made;

14 “(2) be comprised of components each of which
15 is, to the maximum extent practicable, scientifically
16 objective, and inclusive of all relevant data;

17 “(3) use chemical and facility-specific data and
18 analysis (such as bioavailability, exposure, and fate
19 and transport evaluations) in preference to default
20 assumptions when—

21 “(A) such data and analysis are likely to
22 vary by facility; and

23 “(B) facility-specific risks are to be com-
24 municated to the public or the use of such data

1 and analysis alters the basis for decisions to be
2 made; and

3 “(4) use a range and distribution of realistic
4 and scientifically supportable assumptions when
5 chemical and facility-specific data are not available,
6 if the use of such assumptions would communicate
7 more accurately the consequences of the various de-
8 cision options.

9 “(c) RISK COMMUNICATION PRINCIPLES.—The docu-
10 ment reporting the results of a facility-specific risk evalua-
11 tion shall—

12 “(1) contain an explanation that clearly com-
13 municates the risks at the facility;

14 “(2) identify and explain all assumptions used
15 in the evaluation, any alternative assumptions that,
16 if made, could materially affect the outcome of the
17 evaluation, the policy or value judgments used in
18 choosing the assumptions, and whether empirical
19 data conflict with or validate the assumptions;

20 “(3) present—

21 “(A) a range and distribution of exposure
22 and risk estimates, including, if numerical esti-
23 mates are provided, central estimates of expo-
24 sure and risk using—

1 “(i) the most scientifically supportable
2 assumptions or a weighted combination of
3 multiple assumptions based on different
4 scenarios; or

5 “(ii) any other methodology designed
6 to characterize the most scientifically sup-
7 portable estimate of risk given the infor-
8 mation that is available at the time of the
9 facility-specific risk evaluation; and

10 “(B) a statement of the nature and mag-
11 nitude of the scientific and other uncertainties
12 associated with those estimates;

13 “(4) state the size of the population potentially
14 at risk from releases from the facility and the likeli-
15 hood that potential exposures will occur based on the
16 actual or planned or reasonably anticipated future
17 use of the land and water resources; and

18 “(5) compare the risks from the facility to
19 other risks commonly experienced by members of the
20 local community in their daily lives and similar risks
21 regulated by the Federal Government.

22 “(d) REGULATIONS.—Not later than 18 months after
23 the date of enactment of this section, the Administrator
24 shall issue a final regulation implementing this section

1 that promotes a realistic characterization of risk that nei-
2 ther minimizes nor exaggerates the risks and potential
3 risks posed by a facility or a proposed remedial action.

4 **“SEC. 132. PRESUMPTIVE REMEDIAL ACTIONS.**

5 “(a) IN GENERAL.—Not later than 1 year after the
6 date of enactment of this section, the Administrator shall
7 issue a final regulation establishing presumptive remedial
8 actions for commonly encountered types of facilities with
9 reasonably well understood contamination problems and
10 exposure potential.

11 “(b) PRACTICABILITY AND COST-EFFECTIVENESS.—
12 Such presumptive remedies must have been demonstrated
13 to be technically practicable and cost-effective methods of
14 achieving the goals of protecting human health and the
15 environment stated in section 121(a)(1)(B).

16 “(c) VARIATIONS.—The Administrator may issue var-
17 ious presumptive remedial actions based on various uses
18 of land and water resources, various environmental media,
19 and various types of hazardous substances, pollutants, or
20 contaminants.

21 “(d) ENGINEERING CONTROLS.—Presumptive reme-
22 dial actions are not limited to treatment remedies, but
23 may be based on, or include, institutional and standard
24 engineering controls.”.

1 **SEC. 404. REMEDY SELECTION PROCEDURES.**

2 Title I of the Comprehensive Environmental Re-
3 sponse, Compensation, and Liability Act of 1980 (42
4 U.S.C. 9601 et seq.) (as amended by section 403) is
5 amended by adding at the end the following:

6 **“SEC. 133. REMEDIAL ACTION PLANNING AND IMPLEMEN-**
7 **TATION.**

8 “(a) IN GENERAL.—

9 “(1) BASIC RULES.—

10 “(A) PROCEDURES.—A remedial action
11 with respect to a facility that is listed or pro-
12 posed for listing on the National Priorities List
13 shall be developed and selected in accordance
14 with the procedures set forth in this section.

15 “(B) NO OTHER PROCEDURES OR RE-
16 QUIREMENTS.—The procedures stated in this
17 section are in lieu of any procedures or require-
18 ments under any other law to conduct remedial
19 investigations, feasibility studies, record of deci-
20 sions, remedial designs, or remedial actions.

21 “(C) LIMITED REVIEW.—In a case in
22 which the potentially responsible parties pre-
23 pare a remedial action plan, only the work plan,
24 facility evaluation, proposed remedial action
25 plan, and final remedial design shall be subject

1 to review, comment, and approval by the Ad-
 2 ministrator.

3 “(D) DESIGNATION OF POTENTIALLY RE-
 4 SPONSIBLE PARTIES TO PREPARE WORK PLAN,
 5 FACILITY EVALUATION, PROPOSED REMEDIAL
 6 ACTION, AND REMEDIAL DESIGN AND TO IM-
 7 PLEMENT THE REMEDIAL ACTION PLAN.—In
 8 the case of a facility for which the Adminis-
 9 trator is not required to prepare a work plan,
 10 facility evaluation, proposed remedial action,
 11 and remedial design and implement the reme-
 12 dial action plan—

13 “(i) if a potentially responsible party
 14 or group of potentially responsible par-
 15 ties—

16 “(I) expresses an intention to
 17 prepare a work plan, facility evalua-
 18 tion, proposed remedial action plan,
 19 and remedial design and to implement
 20 the remedial action plan (not includ-
 21 ing any such expression of intention
 22 that the Administrator finds is not
 23 made in good faith); and

24 “(II) demonstrates that the po-
 25 tentially responsible party or group of

1 potentially responsible parties has the
2 financial resources and the expertise
3 to perform those functions,
4 the Administrator shall designate the po-
5 tentially responsible party or group of po-
6 tentially responsible parties to perform
7 those functions; and

8 “(ii) if more than 1 potentially re-
9 sponsible party or group of potentially re-
10 sponsible parties—

11 “(I) expresses an intention to
12 prepare a work plan, facility evalua-
13 tion, proposed remedial action plan,
14 and remedial design and to implement
15 the remedial action plan (not includ-
16 ing any such expression of intention
17 that the Administrator finds is not
18 made in good faith); and

19 “(II) demonstrates that the po-
20 tentially responsible parties or group
21 of potentially responsible parties has
22 the financial resources and the exper-
23 tise to perform those functions,

the Administrator, based on an assessment of the various parties' comparative financial resources, technical expertise, and histories of cooperation with respect to facilities that are listed on the National Priorities List, shall designate 1 potentially responsible party or group of potentially responsible parties to perform those functions.

“(E) APPROVAL REQUIRED AT EACH STEP OF PROCEDURE.—No action shall be taken with respect to a facility evaluation, proposed remedial action plan, remedial action plan, or remedial design, respectively, until a work plan, facility evaluation, proposed remedial action plan, and remedial action plan, respectively, have been approved by the Administrator.

“(F) NATIONAL CONTINGENCY PLAN.—The Administrator shall conform the National Contingency Plan regulations to reflect the procedures stated in this section.

“(2) USE OF PRESUMPTIVE REMEDIAL ACTIONS.—

“(A) PROPOSAL TO USE.—In a case in which a presumptive remedial action applies,

1 the Administrator (if the Administrator is con-
2 ducting the remedial action) or the preparer of
3 the remedial action plan may, after conducting
4 a facility evaluation, propose a presumptive re-
5 medial action for the facility, if the Adminis-
6 trator or preparer shows with appropriate docu-
7 mentation that the facility fits the generic clas-
8 sification for which a presumptive remedial ac-
9 tion has been issued and performs an engineer-
10 ing evaluation to demonstrate that the pre-
11 sumptive remedial action can be applied at the
12 facility.

13 “(B) LIMITATION.—The Administrator
14 may not require a potentially responsible party
15 to implement a presumptive remedial action.

16 “(b) REMEDIAL ACTION PLANNING PROCESS.—

17 “(1) IN GENERAL.—The Administrator or a po-
18 tentially responsible party shall prepare and imple-
19 ment a remedial action plan for a facility.

20 “(2) CONTENTS.—A remedial action plan shall
21 consist of—

22 “(A) the results of a facility evaluation, in-
23 cluding any screening analysis performed at the
24 facility;

1 “(B) a discussion of the potentially viable
 2 remedies that are considered to be reasonable
 3 under section 121(a), the respective capital
 4 costs, operation and maintenance costs, and es-
 5 timated present worth costs of the remedies,
 6 and how the remedies balance the factors stated
 7 in section 121(a)(1)(D);

8 “(C) a description of the remedial action to
 9 be taken;

10 “(D) a description of the facility-specific
 11 risk-based evaluation under section 131 and a
 12 demonstration that the selected remedial action
 13 will satisfy sections 121(a) and 132; and

14 “(E) a realistic schedule for conducting the
 15 remedial action, taking into consideration facil-
 16 ity-specific factors.

17 “(3) WORK PLAN.—

18 “(A) IN GENERAL.—Prior to preparation
 19 of a remedial action plan, the preparer shall de-
 20 velop a work plan, including a community infor-
 21 mation and participation plan, which generally
 22 describes how the remedial action plan will be
 23 developed.

24 “(B) SUBMISSION.—A work plan shall be
 25 submitted to the Administrator, the State, the

1 community response organization, the local li-
2 brary, and any other public facility designated
3 by the Administrator.

4 “(C) PUBLICATION.—The Administrator
5 or other person that prepares a work plan shall
6 publish in a newspaper of general circulation in
7 the area where the facility is located, and post
8 in conspicuous places in the local community, a
9 notice announcing that the work plan is avail-
10 able for review at the local library and that
11 comments concerning the work plan can be sub-
12 mitted to the preparer of the work plan, the
13 Administrator, the State, or the local commu-
14 nity response organization.

15 “(D) FORWARDING OF COMMENTS.—If
16 comments are submitted to the Administrator,
17 the State, or the community response organiza-
18 tion, the Administrator, State, or community
19 response organization shall forward the com-
20 ments to the preparer of the work plan.

21 “(E) NOTICE OF DISAPPROVAL.—If the
22 Administrator does not approve a work plan,
23 the Administrator shall—

1 “(i) identify to the preparer of the
2 work plan, with specificity, any deficiencies
3 in the submission; and

4 “(ii) require that the preparer submit
5 a revised work plan within a reasonable pe-
6 riod of time, which shall not exceed 90
7 days except in unusual circumstances, as
8 determined by the Administrator.

9 “(4) FACILITY EVALUATION.—

10 “(A) IN GENERAL.—The Administrator (or
11 the preparer of the facility evaluation) shall
12 conduct a facility evaluation at each facility to
13 characterize the risk posed by the facility by
14 gathering enough information necessary to—

15 “(i) assess potential remedial alter-
16 natives, including ascertaining, to the de-
17 gree appropriate, the volume and nature of
18 the contaminants, their location, potential
19 exposure pathways and receptors;

20 “(ii) discern the actual or planned or
21 reasonably anticipated future use of the
22 land and water resources; and

23 “(iii) screen out any uncontaminated
24 areas, contaminants, and potential path-
25 ways from further consideration.

1 “(B) SUBMISSION.—A draft facility eval-
2 uation shall be submitted to the Administrator
3 for approval.

4 “(C) PUBLICATION.—Not later than 30
5 days after submission, or in a case in which the
6 Administrator is preparing the remedial action
7 plan, after the completion of the draft facility
8 evaluation, the Administrator shall publish in a
9 newspaper of general circulation in the area
10 where the facility is located, and post in con-
11 spicuous places in the local community, a notice
12 announcing that the draft facility evaluation is
13 available for review and that comments con-
14 cerning the evaluation can be submitted to the
15 Administrator, the State, and the community
16 response organization.

17 “(D) AVAILABILITY OF COMMENTS.—If
18 comments are submitted to the Administrator,
19 the State, or the community response organiza-
20 tion, the Administrator, State, or community
21 response organization shall make the comments
22 available to the preparer of the facility evalua-
23 tion.

1 “(E) NOTICE OF APPROVAL.—If the Ad-
2 ministrator approves a facility evaluation, the
3 Administrator shall—

4 “(i) notify the community response or-
5 ganization; and

6 “(ii) publish in a newspaper of general
7 circulation in the area where the facility is
8 located, and post in conspicuous places in
9 the local community, a notice of approval.

10 “(F) NOTICE OF DISAPPROVAL.—If the
11 Administrator does not approve a facility eval-
12 uation, the Administrator shall—

13 “(i) identify to the preparer of the fa-
14 cility evaluation, with specificity, any defi-
15 ciencies in the submission; and

16 “(ii) require that the preparer submit
17 a revised facility evaluation within a rea-
18 sonable period of time, which shall not ex-
19 ceed 90 days except in unusual cir-
20 cumstances, as determined by the Adminis-
21 trator.

22 “(5) PROPOSED REMEDIAL ACTION PLAN.—

23 “(A) SUBMISSION.—In a case in which a
24 potentially responsible party prepares a reme-
25 dial action plan, the preparer shall submit the

1 remedial action plan to the Administrator for
2 approval and provide a copy to the local library.

3 “(B) PUBLICATION.—After receipt of the
4 proposed remedial action plan, or in a case in
5 which the Administrator is preparing the reme-
6 dial action plan, after the completion of the re-
7 medial action plan, the Administrator shall
8 cause to be published in a newspaper of general
9 circulation in the area where the facility is lo-
10 cated and posted in other conspicuous places in
11 the local community a notice announcing that
12 the proposed remedial action plan is available
13 for review at the local library and that com-
14 ments concerning the remedial action plan can
15 be submitted to the Administrator, the State,
16 and the community response organization.

17 “(C) AVAILABILITY OF COMMENTS.—If
18 comments are submitted to a State or the com-
19 munity response organization, the State or com-
20 munity response organization shall make the
21 comments available to the preparer of the pro-
22 posed remedial action plan.

1 “(D) HEARING.—The Administrator shall
2 hold a public hearing at which the proposed re-
3 medial action plan shall be presented and public
4 comment received.

5 “(E) REMEDY REVIEW BOARDS.—

6 “(i) ESTABLISHMENT.—Not later
7 than 60 days after the date of enactment
8 of this section, the Administrator shall es-
9 tablish and appoint the members of 1 or
10 more remedy review boards (referred to in
11 this subparagraph as a “remedy review
12 board”), each consisting of independent
13 technical experts within Federal and State
14 agencies with responsibility for remediating
15 contaminated facilities.

16 “(ii) SUBMISSION OF REMEDIAL AC-
17 TION PLANS FOR REVIEW.—Subject to
18 clause (iii), a proposed remedial action
19 plan prepared by a potentially responsible
20 party or the Administrator may be submit-
21 ted to a remedy review board at the re-
22 quest of the person responsible for prepar-
23 ing or implementing the remedial action
24 plan.

1 “(iii) NO REVIEW.—The Adminis-
2 trator may preclude submission of a pro-
3 posed remedial action plan to a remedy re-
4 view board if the Administrator determines
5 that review by a remedy review board
6 would result in an unreasonably long delay
7 that would threaten human health or the
8 environment.

9 “(iv) RECOMMENDATIONS.—Not later
10 than 180 days after receipt of a request
11 for review (unless the Administrator, for
12 good cause, grants additional time), a rem-
13 edy review board shall provide rec-
14 ommendations to the Administrator re-
15 garding whether the proposed remedial ac-
16 tion plan is—

17 “(I) consistent with the require-
18 ments and standards of section
19 121(a);

20 “(II) technically feasible or infea-
21 sible from an engineering perspective;
22 and

23 “(III) reasonable or unreasonable
24 in cost.

1 “(v) REVIEW BY THE ADMINIS-
2 TRATOR.—

3 “(I) CONSIDERATION OF COM-
4 MENTS.—In reviewing a proposed re-
5 medial action plan, a remedy review
6 board shall consider any comments
7 submitted under subparagraphs (B)
8 and (D) and shall provide an oppor-
9 tunity for a meeting, if requested,
10 with the person responsible for pre-
11 paring or implementing the remedial
12 action plan.

13 “(II) STANDARD OF REVIEW.—In
14 determining whether to approve or
15 disapprove a proposed remedial action
16 plan, the Administrator shall give sub-
17 stantial weight to the recommenda-
18 tions of the remedy review board.

19 “(F) APPROVAL.—

20 “(i) IN GENERAL.—The Adminis-
21 trator shall approve a proposed remedial
22 action plan if the plan—

23 “(I) contains the information de-
24 scribed in section 131(b); and

25 “(II) satisfies section 121(a).

1 “(ii) DEFAULT.—If the Administrator
 2 fails to issue a notice of disapproval of a
 3 proposed remedial action plan in accord-
 4 ance with subparagraph (G) within 180
 5 days after the proposed plan is submitted,
 6 the plan shall be considered to be approved
 7 and its implementation fully authorized.

8 “(G) NOTICE OF APPROVAL.—If the Ad-
 9 ministrator approves a proposed remedial action
 10 plan, the Administrator shall—

11 “(i) notify the community response or-
 12 ganization; and

13 “(ii) publish in a newspaper of general
 14 circulation in the area where the facility is
 15 located, and post in conspicuous places in
 16 the local community, a notice of approval.

17 “(H) NOTICE OF DISAPPROVAL.—If the
 18 Administrator does not approve a proposed re-
 19 medial action plan, the Administrator shall—

20 “(i) inform the preparer of the pro-
 21 posed remedial action plan, with specific-
 22 ity, of any deficiencies in the submission;
 23 and

24 “(ii) request that the preparer submit
 25 a revised proposed remedial action plan

1 within a reasonable time, which shall not
2 exceed 90 days except in unusual cir-
3 cumstances, as determined by the Adminis-
4 trator.

5 “(I) JUDICIAL REVIEW.—A recommenda-
6 tion under subparagraph (E)(iv) and the Ad-
7 ministrator’s review of such a recommendation
8 shall be subject to the limitations on judicial re-
9 view under section 113(h).

10 “(6) IMPLEMENTATION OF REMEDIAL ACTION
11 PLAN.—A remedial action plan that has been ap-
12 proved or is considered to be approved under para-
13 graph (5) shall be implemented in accordance with
14 the schedule set forth in the remedial action plan.

15 “(7) REMEDIAL DESIGN.—

16 “(A) SUBMISSION.—A remedial design
17 shall be submitted to the Administrator, or in
18 a case in which the Administrator is preparing
19 the remedial action plan, shall be completed by
20 the Administrator.

21 “(B) PUBLICATION.—After receipt by the
22 Administrator of (or completion by the Admin-
23 istrator of) the remedial design, the Adminis-
24 trator shall—

1 “(i) notify the community response or-
2 ganization; and

3 “(ii) cause a notice of submission or
4 completion of the remedial design to be
5 published in a newspaper of general cir-
6 culation and posted in conspicuous places
7 in the area where the facility is located.

8 “(C) COMMENT.—The Administrator shall
9 provide an opportunity to the public to submit
10 written comments on the remedial design.

11 “(D) APPROVAL.—Not later than 90 days
12 after the submission to the Administrator of (or
13 completion by the Administrator of) the reme-
14 dial design, the Administrator shall approve or
15 disapprove the remedial design.

16 “(E) NOTICE OF APPROVAL.—If the Ad-
17 ministrator approves a remedial design, the Ad-
18 ministrator shall—

19 “(i) notify the community response or-
20 ganization; and

21 “(ii) publish in a newspaper of general
22 circulation in the area where the facility is
23 located, and post in conspicuous places in
24 the local community, a notice of approval.

1 “(F) NOTICE OF DISAPPROVAL.—If the
2 Administrator disapproves the remedial design,
3 the Administrator shall—

4 “(i) identify with specificity any defi-
5 ciencies in the submission; and

6 “(ii) allow the preparer submitting a
7 remedial design a reasonable time (which
8 shall not exceed 90 days except in unusual
9 circumstances, as determined by the Ad-
10 ministrator) in which to submit a revised
11 remedial design.

12 “(c) ENFORCEMENT OF REMEDIAL ACTION PLAN.—

13 “(1) NOTICE OF SIGNIFICANT DEVIATION.—If
14 the Administrator determines that the implementa-
15 tion of the remedial action plan has deviated signifi-
16 cantly from the plan, the Administrator shall provide
17 the implementing party a notice that requires the
18 implementing party, within a reasonable period of
19 time specified by the Administrator, to—

20 “(A) comply with the terms of the remedial
21 action plan; or

22 “(B) submit a notice for modifying the
23 plan.

24 “(2) FAILURE TO COMPLY.—

1 “(A) CLASS ONE ADMINISTRATIVE PEN-
 2 ALTY.—In issuing a notice under paragraph
 3 (1), the Administrator may impose a class one
 4 administrative penalty consistent with section
 5 109(a).

6 “(B) ADDITIONAL ENFORCEMENT MEAS-
 7 URES.—If the implementing party fails to either
 8 comply with the plan or submit a proposed
 9 modification, the Administrator may pursue all
 10 additional appropriate enforcement measures
 11 pursuant to this Act.

12 “(d) MODIFICATIONS TO REMEDIAL ACTION.—

13 “(1) DEFINITION.—In this subsection, the term
 14 ‘major modification’ means a modification that—

15 “(A) fundamentally alters the interpreta-
 16 tion of site conditions at the facility;

17 “(B) fundamentally alters the interpreta-
 18 tion of sources of risk at the facility;

19 “(C) fundamentally alters the scope of pro-
 20 tection to be achieved by the selected remedial
 21 action;

22 “(D) fundamentally alters the performance
 23 of the selected remedial action; or

24 “(E) delays the completion of the remedy
 25 by more than 180 days.

1 “(2) MAJOR MODIFICATIONS.—

2 “(A) IN GENERAL.—If the Administrator
3 or other implementing party proposes a major
4 modification to the plan, the Administrator or
5 other implementing party shall demonstrate
6 that—

7 “(i) the major modification constitutes
8 the most cost-effective remedial alternative
9 that is technologically feasible and is not
10 unreasonably costly; and

11 “(ii) that the revised remedy will con-
12 tinue to satisfy section 121(a).

13 “(B) NOTICE AND COMMENT.—The Ad-
14 ministrator shall provide the implementing
15 party, the community response organization,
16 and the local community notice of the proposed
17 major modification and at least 30 days’ oppor-
18 tunity to comment on any such proposed modi-
19 fication.

20 “(C) PROMPT ACTION.—At the end of the
21 comment period, the Administrator shall
22 promptly approve or disapprove the proposed
23 modification and order implementation of the
24 modification in accordance with any reasonable

1 and relevant requirements that the Adminis-
2 trator may specify.

3 “(3) MINOR MODIFICATIONS.—Nothing in this
4 section modifies the discretionary authority of the
5 Administrator to make a minor modification of a
6 record of decision or remedial action plan to conform
7 to the best science and engineering, the require-
8 ments of this Act, or changing conditions at a facil-
9 ity.”.

10 **SEC. 405. COMPLETION OF PHYSICAL CONSTRUCTION AND**
11 **DELISTING.**

12 Title I of the Comprehensive Environmental Re-
13 sponse, Compensation, and Liability Act of 1980 (42
14 U.S.C. 9601 et seq.) (as amended by section 404) is
15 amended by adding at the end the following:

16 **“SEC. 134. COMPLETION OF PHYSICAL CONSTRUCTION AND**
17 **DELISTING.**

18 “(a) IN GENERAL.—

19 “(1) PROPOSED NOTICE OF COMPLETION AND
20 PROPOSED DELISTING.—Not later than 180 days
21 after the completion by the Administrator of phys-
22 ical construction necessary to implement a response
23 action at a facility, or not later than 180 days after
24 receipt of a notice of such completion from the im-
25 plementing party, the Administrator shall publish a

1 notice of completion and proposed delisting of the
2 facility from the National Priorities List in the Fed-
3 eral Register and in a newspaper of general circula-
4 tion in the area where the facility is located.

5 “(2) PHYSICAL CONSTRUCTION.—For the pur-
6 poses of paragraph (1), physical construction nec-
7 essary to implement a response action at a facility
8 shall be considered to be complete when—

9 “(A) construction of all systems, struc-
10 tures, devices, and other components necessary
11 to implement a response action for the entire
12 facility has been completed in accordance with
13 the remedial design plan; or

14 “(B) no construction, or no further con-
15 struction, is expected to be undertaken.

16 “(3) COMMENTS.—The public shall be provided
17 30 days in which to submit comments on the notice
18 of completion and proposed delisting.

19 “(4) FINAL NOTICE.—Not later than 60 days
20 after the end of the comment period, the Adminis-
21 trator shall—

22 “(A) issue a final notice of completion and
23 delisting or a notice of withdrawal of the pro-
24 posed notice until the implementation of the re-
25 medial action is determined to be complete; and

1 “(B) publish the notice in the Federal
2 Register and in a newspaper of general circula-
3 tion in the area where the facility is located.

4 “(5) FAILURE TO ACT.—If the Administrator
5 fails to publish a notice of withdrawal within the 60-
6 day period described in paragraph (4)—

7 “(A) the remedial action plan shall be
8 deemed to have been completed; and

9 “(B) the facility shall be delisted by oper-
10 ation of law.

11 “(6) EFFECT OF DELISTING.—The delisting of
12 a facility shall have no effect on—

13 “(A) liability allocation requirements or
14 cost-recovery provisions otherwise provided in
15 this Act;

16 “(B) any liability of a potentially respon-
17 sible party or the obligation of any person to
18 provide continued operation and maintenance;

19 “(C) the authority of the Administrator to
20 make expenditures from the Fund relating to
21 the facility; or

22 “(D) the enforceability of any consent
23 order or decree relating to the facility.

1 “(7) FAILURE TO MAKE TIMELY DIS-
2 APPROVAL.—The issuance of a final notice of com-
3 pletion and delisting or of a notice of withdrawal
4 within the time required by subsection (a)(3) con-
5 stitutes a nondiscretionary duty within the meaning
6 of section 310(a)(2).

7 “(b) CERTIFICATION.—A final notice of completion
8 and delisting shall include a certification by the Adminis-
9 trator that the facility has met all of the requirements of
10 the remedial action plan (except requirements for contin-
11 ued operation and maintenance).

12 “(c) FUTURE USE OF A FACILITY.—

13 “(1) FACILITY AVAILABLE FOR UNRESTRICTED
14 USE.—If, after completion of physical construction,
15 a facility is available for unrestricted use and there
16 is no need for continued operation and maintenance,
17 the potentially responsible parties shall have no fur-
18 ther liability under any Federal, State, or local law
19 (including any regulation) for remediation at the fa-
20 cility, unless the Administrator determines, based on
21 new and reliable factual information about the facil-
22 ity, that the facility does not satisfy section 121(a).

23 “(2) FACILITY NOT AVAILABLE FOR ANY
24 USE.—If, after completion of physical construction,
25 a facility is not available for any use or there are

1 continued operation and maintenance requirements
2 that preclude use of the facility, the Administrator
3 shall—

4 “(A) review the status of the facility every
5 5 years; and

6 “(B) require additional remedial action at
7 the facility if the Administrator determines,
8 after notice and opportunity for hearing, that
9 the facility does not satisfy section 121(a).

10 “(3) FACILITIES AVAILABLE FOR RESTRICTED
11 USE.—The Administrator may determine that a fa-
12 cility or portion of a facility is available for re-
13 stricted use while a response action is under way or
14 after physical construction has been completed. The
15 Administrator shall make a determination that
16 uncontaminated portions of the facility are available
17 for unrestricted use when such use would not inter-
18 fere with ongoing operations and maintenance activi-
19 ties or endanger human health or the environment.

20 “(d) OPERATION AND MAINTENANCE.—The need to
21 perform continued operation and maintenance at a facility
22 shall not delay delisting of the facility or issuance of the
23 certification if performance of operation and maintenance
24 is subject to a legally enforceable agreement, order, or de-
25 cree.

1 “(e) CHANGE OF USE OF FACILITY.—

2 “(1) PETITION.—Any person may petition the
3 Administrator to change the use of a facility de-
4 scribed in subsection (c) (2) or (3) from that which
5 was the basis of the remedial action plan.

6 “(2) GRANT.—The Administrator may grant a
7 petition under paragraph (1) if the petitioner agrees
8 to implement any additional remedial actions that
9 the Administrator determines are necessary to con-
10 tinue to satisfy section 121(a), considering the dif-
11 ferent use of the facility.

12 “(3) RESPONSIBILITY FOR RISK.—When a peti-
13 tion has been granted under paragraph (2), the per-
14 son requesting the change in use of the facility shall
15 be responsible for all risk associated with altering
16 the facility and all costs of implementing any nec-
17 essary additional remedial actions.”.

18 **SEC. 406. TRANSITION RULES FOR FACILITIES CURRENTLY**
19 **INVOLVED IN REMEDY SELECTION.**

20 Title I of the Comprehensive Environmental Re-
21 sponse, Compensation, and Liability Act of 1980 (42
22 U.S.C. 9601 et seq.) (as amended by section 405) is
23 amended by adding at the end the following:

1 **“SEC. 135. TRANSITION RULES FOR FACILITIES INVOLVED**
2 **IN REMEDY SELECTION ON DATE OF ENACT-**
3 **MENT.**

4 “(a) NO RECORD OF DECISION.—

5 “(1) OPTION.—In the case of a facility or oper-
6 able unit that, as of the date of enactment of this
7 section, is the subject of a remedial investigation
8 and feasibility study (whether completed or incom-
9 plete), the potentially responsible parties or the Ad-
10 ministrator may elect to follow the remedial action
11 plan process stated in section 133 rather than the
12 remedial investigation and feasibility study and
13 record of decision process under regulations in effect
14 on the date of enactment of this section that would
15 otherwise apply if the requesting party notifies the
16 Administrator and other potentially responsible par-
17 ties of the election not later than 90 days after the
18 date of enactment of this section.

19 “(2) SUBMISSION OF FACILITY EVALUATION.—

20 In a case in which the potentially responsible parties
21 have or the Administrator has made an election
22 under subsection (a), the potentially responsible par-
23 ties shall submit the proposed facility evaluation
24 within 180 days after the date on which notice of
25 the election is given.

26 “(b) REMEDY REVIEW BOARDS.—

1 “(1) AUTHORITY.—A remedy review board es-
2 tablished under section 133(b)(5)(E) (referred to in
3 this subsection as a ‘remedy review board’) shall
4 have authority to consider a petition under para-
5 graph (3) or (4) of this subsection.

6 “(2) GENERAL PROCEDURE.—

7 “(A) COMPLETION OF REVIEW.—The re-
8 view of a petition submitted to a remedy review
9 board under this subsection shall be completed
10 not later than 180 days after the receipt of the
11 petition unless the Administrator, for good
12 cause, grants additional time.

13 “(B) COSTS OF REVIEW.—All reasonable
14 costs incurred by a remedy review board, the
15 Administrator, or a State in conducting a re-
16 view or evaluating a petition for possible objec-
17 tion shall be borne by the petitioner.

18 “(C) DECISIONS.—At the completion of
19 the 180-day review period, a remedy review
20 board shall issue a written decision including
21 responses to all comments submitted during the
22 review process with regard to a petition.

23 “(D) OPPORTUNITY FOR COMMENT AND
24 MEETINGS.—In reviewing a petition under this
25 subsection, a remedy review board shall provide

1 an opportunity for all interested parties, includ-
2 ing representatives of the State and local com-
3 munity in which the facility is located, to com-
4 ment on the petition and, if requested, to meet
5 with the remedy review board under this sub-
6 section.

7 “(E) REVIEW BY THE ADMINISTRATOR.—

8 “(i) IN GENERAL.—The Administrator
9 shall have final review of any decision of a
10 remedy review board under this subsection.

11 “(ii) STANDARD OF REVIEW.—In con-
12 ducting a review of a decision of a remedy
13 review board under this subsection, the Ad-
14 ministrator shall accord substantial weight
15 to the remedy review board’s decision.

16 “(iii) REJECTION OF DECISION.—Any
17 determination to reject a remedy review
18 board’s decision under this subsection
19 must be approved by the Administrator or
20 the Assistant Administrator for Solid
21 Waste and Emergency Response.

22 “(F) JUDICIAL REVIEW.—A decision of a
23 remedy review board under subparagraph (C)

1 and the Administrator's review of such a deci-
2 sion shall be subject to the limitations on judi-
3 cial review under section 113(h).

4 “(G) CALCULATIONS OF COST SAVINGS.—

5 “(i) IN GENERAL.—A determination
6 with respect to relative cost savings and
7 whether construction has begun shall be
8 based on operable units or distinct ele-
9 ments or phases of remediation and not on
10 the entire record of decision.

11 “(ii) ITEMS NOT TO BE CONSID-
12 ERED.—In determining the amount of cost
13 savings—

14 “(I) there shall not be taken into
15 account any administrative, demobili-
16 zation, remobilization, or additional
17 investigation costs of the review or
18 modification of the remedy associated
19 with the alternative remedy; and

20 “(II) only the estimated cost sav-
21 ings of expenditures avoided by under-
22 taking the alternative remedy shall be
23 considered as cost savings.

24 “(3) CONSTRUCTION NOT BEGUN.—

1 “(A) PETITION.—In the case of a facility
2 or operable unit with respect to which a record
3 of decision has been signed but construction has
4 not yet begun prior to the date of enactment of
5 this section and which meet the criteria of sub-
6 paragraph (B), the implementor of the record
7 of decision may file a petition with a remedy re-
8 view board not later than 90 days after the date
9 of enactment of this section to determine
10 whether an alternate remedy under section 133
11 should apply to the facility or operable unit.

12 “(B) CRITERIA FOR APPROVAL.—Subject
13 to subparagraph (C), a remedy review board
14 shall approve a petition described in subpara-
15 graph (A) if—

16 “(i) the alternative remedial action
17 proposed in the petition satisfies section
18 121(a);

19 “(ii)(I) in the case of a record of deci-
20 sion with an estimated implementation cost
21 of between \$5,000,000 and \$10,000,000,
22 the alternative remedial action achieves
23 cost savings of at least 25 percent of the
24 total costs of the record of decision; or

1 “(II) in the case of a record of deci-
2 sion valued at a total cost greater than
3 \$10,000,000, the alternative remedial ac-
4 tion achieves cost savings of \$2,500,000 or
5 more;

6 “(iii) in the case of a record of deci-
7 sion involving ground water extraction and
8 treatment remedies for substances other
9 than dense, nonaqueous phase liquids, the
10 alternative remedial action achieves cost
11 savings of \$2,000,000 or more; or

12 “(iv) in the case of a record of deci-
13 sion intended primarily for the remediation
14 of dense, nonaqueous phase liquids, the al-
15 ternative remedial action achieves cost sav-
16 ings of \$1,000,000 or more.

17 “(C) CONTENTS OF PETITION.—For the
18 purposes of facility-specific risk assessment
19 under section 131, a petition described in sub-
20 paragraph (A) shall rely on risk assessment
21 data that were available prior to issuance of the
22 record of decision but shall consider the actual
23 or planned or reasonably anticipated future use
24 of the land and water resources.

1 “(D) INCORRECT DATA.—Notwithstanding
2 subparagraph (B) and (C), a remedy review
3 board may approve a petition if the petitioner
4 demonstrates that technical data generated sub-
5 sequent to the issuance of the record of decision
6 indicates that the decision was based on faulty
7 or incorrect information.

8 “(4) ADDITIONAL CONSTRUCTION.—

9 “(A) PETITION.—In the case of a facility
10 or operable unit with respect to which a record
11 of decision has been signed and construction
12 has begun prior to the date of enactment of this
13 section and which meets the criteria of subpara-
14 graph (B), but for which additional construc-
15 tion or long-term operation and maintenance
16 activities are anticipated, the implementor of
17 the record of decision may file a petition with
18 a remedy review board within 90 days after the
19 date of enactment of this section to determine
20 whether an alternative remedial action should
21 apply to the facility or operable unit.

22 “(B) CRITERIA FOR APPROVAL.—Subject
23 to subparagraph (C), a remedy review board
24 shall approve a petition described in subpara-
25 graph (A) if—

1 “(i) the alternative remedial action
2 proposed in the petition satisfies section
3 121(a); and

4 “(ii)(I) in the case of a record of deci-
5 sion valued at a total cost between
6 \$5,000,000 and \$10,000,000, the alter-
7 native remedial action achieves cost sav-
8 ings of at least 50 percent of the total
9 costs of the record of decision;

10 “(II) in the case of a record of deci-
11 sion valued at a total cost greater than
12 \$10,000,000, the alternative remedial ac-
13 tion achieves cost savings of \$5,000,000 or
14 more; or

15 “(III) in the case of a record of deci-
16 sion involving monitoring, operations, and
17 maintenance obligations where construction
18 is completed, the alternative remedial ac-
19 tion achieves cost savings of \$1,000,000 or
20 more.

21 “(C) INCORRECT DATA.—Notwithstanding
22 subparagraph (B), a remedy review board may
23 approve a petition if the petitioner dem-
24 onstrates that technical data generated subse-
25 quent to the issuance of the record of decision

1 indicates that the decision was based on faulty
2 or incorrect information, and the alternative re-
3 medial action achieves cost savings of at least
4 \$2,000,000.

5 “(D) MANDATORY REVIEW.—A remedy re-
6 view board shall not be required to entertain
7 more than 1 petition under subparagraph
8 (B)(ii)(III) or (C) with respect to a remedial
9 action plan.

10 “(5) DELAY.—In determining whether an alter-
11 native remedial action will substantially delay the
12 implementation of a remedial action of a facility, no
13 consideration shall be given to the time necessary to
14 review a petition under paragraph (3) or (4) by a
15 remedy review board or the Administrator.

16 “(6) OBJECTION BY THE GOVERNOR.—

17 “(A) NOTIFICATION.—Not later than 7
18 days after receipt of a petition under this sub-
19 section, a remedy review board shall notify the
20 Governor of the State in which the facility is lo-
21 cated and provide the Governor a copy of the
22 petition.

23 “(B) OBJECTION.—The Governor may ob-
24 ject to the petition or the modification of the
25 remedy, if not later than 90 days after receiving

1 a notification under subparagraph (A) the Gov-
 2 ernor demonstrates to the remedy review board
 3 that the selection of the proposed alternative
 4 remedy would cause an unreasonably long delay
 5 that would be likely to result in significant ad-
 6 verse human health impacts, environmental
 7 risks, disruption of planned future use, or eco-
 8 nomic hardship.

9 “(C) DENIAL.—On receipt of an objection
 10 and demonstration under subparagraph (C), the
 11 remedy review board shall—

12 “(i) deny the petition; or

13 “(ii) consider any other action that
 14 the Governor may recommend.

15 “(7) SAVINGS CLAUSE.—Notwithstanding any
 16 other provision of this subsection, in the case of a
 17 remedial action plan for which a final record of deci-
 18 sion under section 121 has been published, if reme-
 19 dial action was not completed pursuant to the reme-
 20 dial action plan before the date of enactment of this
 21 section, the Administrator or a State exercising au-
 22 thority under section 130(d) may modify the reme-
 23 dial action plan in order to conform the plan to the
 24 requirements of this Act, as in effect on the date of
 25 enactment of this section.”.

1 **SEC. 407. NATIONAL PRIORITIES LIST.**

2 (a) AMENDMENTS.—Section 105 of the Comprehen-
3 sive Environmental Response, Compensation, and Liabil-
4 ity Act of 1980 (42 U.S.C. 9605) is amended—

5 (1) in subsection (a)(8) by adding at the end
6 the following:

7 “(C) provision that in listing a facility on the
8 National Priorities List, the Administrator shall not
9 include any parcel of real property at which no re-
10 lease has actually occurred, but to which a released
11 hazardous substance, pollutant, or contaminant has
12 migrated in ground water that has moved through
13 subsurface strata from another parcel of real estate
14 at which the release actually occurred, unless—

15 “(i) the ground water is in use as a public
16 drinking water supply or was in such use at the
17 time of the release; and

18 “(ii) the owner or operator of the facility
19 is liable, or is affiliated with any other person
20 that is liable, for any response costs at the fa-
21 cility, through any direct or indirect familial re-
22 lationship, or any contractual, corporate, or fi-
23 nancial relationship other than that created by
24 the instruments by which title to the facility is
25 conveyed or financed.”; and

26 (2) by adding at the end the following:

1 “(h) LISTING OF PARTICULAR PARCELS.—

2 “(1) DEFINITION.—In subsection (a)(8)(C) and
3 paragraph (2) of this subsection, the term ‘parcel of
4 real property’ means a parcel, lot, or tract of land
5 that has a separate legal description from that of
6 any other parcel, lot, or tract of land the legal de-
7 scription and ownership of which has been recorded
8 in accordance with the law of the State in which it
9 is located.

10 “(2) STATUTORY CONSTRUCTION.—Nothing in
11 subsection (a)(8)(C) shall be construed to limit the
12 Administrator’s authority under section 104 to ob-
13 tain access to and undertake response actions at any
14 parcel of real property to which a released hazardous
15 substance, pollutant, or contaminant has migrated in
16 the ground water.”.

17 (b) REVISION OF NATIONAL PRIORITIES LIST.—The
18 President shall revise the National Priorities List to con-
19 form with the amendments made by subsection (a) not
20 later than 180 days of the date of enactment of this Act.

TITLE V—LIABILITY

2 SEC. 501. LIABILITY EXCEPTIONS AND LIMITATIONS.

3 (a) DEFINITIONS.—Section 101 of the Comprehen-
 4 sive Environmental Response, Liability, and Compensa-
 5 tion Act of 1980 (42 U.S.C. 9601) (as amended by section
 6 401) is amended by adding at the end of the following:

7 “(43) CODISPOSAL LANDFILLS.—The ‘term co-
 8 disposal landfill’ means a landfill that—

9 “(A) was listed on the National Priorities
 10 List as of January 1, 1997;

11 “(B) received for disposal municipal solid
 12 waste or sewage sludge; and

13 “(C) may also have received, before the ef-
 14 fective date of requirements under subtitle C of
 15 the Solid Waste Disposal Act (42 U.S.C. 6921
 16 et seq.), any hazardous waste, if a substantial
 17 portion of the total volume of waste disposed of
 18 at the landfill consisted of municipal solid waste
 19 or sewage sludge that was transported to the
 20 landfill from outside the facility.

21 “(44) MUNICIPAL SOLID WASTE.—The term
 22 ‘municipal solid waste’—

23 “(A) means waste material generated by—

1 “(i) a household (such as a single- or
2 multi-family residence) or a public lodging
3 (such as a hotel or motel); or

4 “(ii) a commercial, institutional, or in-
5 dustrial source, to the extent that—

6 “(I) the waste material is essen-
7 tially the same as waste normally gen-
8 erated by a household or public lodg-
9 ing; or

10 “(II) the waste material is col-
11 lected and disposed of with other mu-
12 nicipal solid waste or sewage sludge as
13 part of normal municipal solid waste
14 collection services, and, regardless of
15 when generated, would be condi-
16 tionally exempt small quantity genera-
17 tor waste under the regulation issued
18 under section 3001(d) of the Solid
19 Waste Disposal Act (42 U.S.C.
20 6921(d)); and

21 “(B) includes food and yard waste, paper,
22 clothing, appliances, consumer product packag-
23 ing, disposable diapers, office supplies, cosmet-
24 ics, glass and metal food containers, elementary

1 or secondary school science laboratory waste,
 2 and household hazardous waste; but

3 “(C) does not include combustion ash gen-
 4 erated by resource recovery facilities or munici-
 5 pal incinerators or waste from manufacturing
 6 or processing (including pollution control) oper-
 7 ations that is not essentially the same as waste
 8 normally generated by a household or public
 9 lodging.

10 “(45) MUNICIPALITY.—The term ‘municipality’
 11 means—

12 “(A) means a political subdivision of a
 13 State (including a city, county, village, town,
 14 township, borough, parish, school district, sani-
 15 tation district, water district, or other public
 16 entity performing local governmental functions);
 17 and

18 “(B) includes a natural person acting in
 19 the capacity of an official, employee, or agent of
 20 any entity described in subparagraph (A) in the
 21 performance of a governmental function.

22 “(46) SEWAGE SLUDGE.—The term ‘sewage
 23 sludge’ means solid, semisolid, or liquid residue re-
 24 moved during the treatment of municipal waste

1 water, domestic sewage, or other waste water at or
 2 by publicly owned treatment works.”.

3 (b) EXCEPTIONS AND LIMITATIONS.—Section 107 of
 4 the Comprehensive Environmental Response, Compensa-
 5 tion, and Liability Act of 1980 (42 U.S.C. 9607) (as
 6 amended by section 306(b)) is amended by adding at the
 7 end the following:

8 “(q) LIABILITY EXEMPTION FOR MUNICIPAL SOLID
 9 WASTE AND SEWAGE SLUDGE.—No person (other than
 10 the United States or a department, agency, or instrumen-
 11 tality of the United States) shall be liable to the United
 12 States or to any other person (including liability for con-
 13 tribution) under this section for any response costs at a
 14 facility listed on the National Priorities List to the extent
 15 that—

16 “(1) the person is liable solely under subpara-
 17 graph (C) or (D) of subsection (a)(1); and

18 “(2) the arrangement for disposal, treatment,
 19 or transport for disposal or treatment, or the accept-
 20 ance for transport for disposal or treatment, in-
 21 volved only municipal solid waste or sewage sludge.

22 “(r) DE MINIMIS CONTRIBUTOR EXEMPTION.—

23 “(1) IN GENERAL.—In the case of a vessel or
 24 facility that is not owned by the United States and
 25 is listed on the National Priorities List, no person

1 described in subparagraph (C) or (D) of subsection
2 (a)(1) (other than the United States or any depart-
3 ment, agency, or instrumentality of the United
4 States) shall be liable to the United States or to any
5 other person (including liability for contribution) for
6 any response costs under this section incurred after
7 the date of enactment of this subsection, if no activ-
8 ity specifically attributable to the person resulted
9 in—

10 “(A) the disposal or treatment of more
11 than 1 percent of the volume of material con-
12 taining a hazardous substance at the vessel or
13 facility before January 1, 1997; or

14 “(B) the disposal or treatment of not more
15 than 200 pounds or 110 gallons of material
16 containing hazardous substances at the vessel
17 or facility before January 1, 1997, or such
18 greater amount as the Administrator may de-
19 termine by regulation.

20 “(2) EXCEPTION.—Paragraph (1) shall not
21 apply in a case in which the Administrator deter-
22 mines that material described in paragraph (1)(A)
23 or (B) has contributed or may contribute signifi-
24 cantly to the amount of response costs at the facil-
25 ity.

1 “(s) SMALL BUSINESS EXEMPTION.—No person
 2 (other than the United States or a department, agency,
 3 or instrumentality of the United States) shall be liable to
 4 the United States or to any person (including liability for
 5 contribution) under this section for any response costs at
 6 a facility listed on the National Priorities List incurred
 7 after the date of enactment of this subsection if the person
 8 is a business that, during the taxable year preceding the
 9 date of transmittal of notification that the business is a
 10 potentially responsible party, had on average fewer than
 11 30 employees or for that taxable year reported \$3,000,000
 12 or less in annual gross revenues.

13 “(t) CODISPOSAL LANDFILL EXEMPTION AND LIM-
 14 TATIONS.—

15 “(1) EXEMPTION.—No person shall be liable to
 16 the United States or to any person (including liabil-
 17 ity for contribution) under this section for any re-
 18 sponse costs at a facility listed on the National Pri-
 19 orities List incurred after the date of enactment of
 20 this subsection to the extent that—

21 “(A) the person is liable under subpara-
 22 graph (C) or (D) of subsection (a)(1); and

23 “(B) the arrangement for disposal, treat-
 24 ment, or transport for disposal or treatment or

the acceptance for disposal or treatment occurred with respect to a codisposal landfill.

“(2) LIMITATIONS.—

“(A) DEFINITIONS.—In this paragraph:

“(i) LARGE MUNICIPALITY.—The term ‘large municipality’ means a municipality with a population of 100,000 or more according to the 1990 census.

“(ii) SMALL MUNICIPALITY.—The term ‘small municipality’ means a municipality with a population of less than 100,000 according to the 1990 census.

“(B) AGGREGATE LIABILITY OF SMALL MUNICIPALITIES.—With respect to a codisposal landfill listed on the National Priorities List that is owned or operated only by small municipalities and that is not subject to the criteria for solid waste landfills published under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) at part 258 of title 40, Code of Federal Regulations (or a successor regulation), the aggregate liability of all small municipalities for response costs incurred on or after the date of enactment of this subsection shall be the lesser of—

1 “(i) 10 percent of the total amount of
2 response costs at the facility; or

3 “(ii) the costs of compliance with the
4 requirements of subtitle D of the Solid
5 Waste Disposal Act (42 U.S.C. 6941 et
6 seq.) for the facility (as if the facility had
7 continued to accept municipal solid waste
8 through January 1, 1997);.

9 “(C) AGGREGATE LIABILITY OF LARGE
10 MUNICIPALITIES.—With respect to a codisposal
11 landfill listed on the National Priorities List
12 that is owned or operated only by large munici-
13 palities and that is not subject to the criteria
14 for solid waste landfills published under subtitle
15 D of the Solid Waste Disposal Act (42 U.S.C.
16 6941 et seq.) at part 258 of title 40, Code of
17 Federal Regulations (or a successor regulation),
18 the aggregate liability of all large municipalities
19 for response costs incurred on or after the date
20 of enactment of this subsection shall be the
21 lesser of—

22 “(i) 20 percent of the proportion of
23 the total amount of response costs at the
24 facility; or

1 “(ii) the costs of compliance with the
2 requirements of subtitle D of the Solid
3 Waste Disposal Act (42 U.S.C. 6941 et
4 seq.) for the facility (as if the facility had
5 continued to accept municipal solid waste
6 through January 1, 1997).

7 “(D) AGGREGATE PERSONS OTHER THAN
8 MUNICIPALITIES.—With respect to a codisposal
9 landfill listed on the National Priorities List
10 that is owned or operated in whole or in part
11 by persons other than municipalities and that is
12 not subject to the criteria for solid waste land-
13 fills published under subtitle D of the Solid
14 Waste Disposal Act (42 U.S.C. 6941 et seq.) at
15 part 258 of title 40, Code of Federal Regula-
16 tions (or a successor regulation), the aggregate
17 liability of all persons other than municipalities
18 shall be the lesser of—

19 “(i) 30 percent of the proportion of
20 the total amount of response costs at the
21 facility; or

22 “(ii) the costs of compliance with the
23 requirements of subtitle D of the Solid
24 Waste Disposal Act (42 U.S.C. 6941 et
25 seq.) for the facility (as if the facility had

1 continued to accept municipal solid waste
2 through January 1, 1997).

3 “(E) AGGREGATE LIABILITY FOR MUNICI-
4 PALITIES AND NON-MUNICIPALITIES.—With re-
5 spect to a codisposal landfill listed on the Na-
6 tional Priorities List that is owned and oper-
7 ated by a combination of small and large mu-
8 nicipalities or persons other than municipalities
9 and that is subject to the criteria for solid
10 waste landfills published under subtitle D of the
11 Solid Waste Disposal Act (42 U.S.C. 6941 et
12 seq.) at part 258 of title 40, Code of Federal
13 Regulations (or a successor regulation)—

14 “(i) the allocator shall determine the
15 proportion of the use of the landfill that
16 was made by small and large municipalities
17 and persons other than municipalities dur-
18 ing the time the facility was in operation;
19 and

20 “(ii) shall allocate among the parties
21 an appropriate percentage of total liability
22 not exceeding the aggregate liability per-
23 centages stated in (B)(ii), (C)(ii), (D)(ii),
24 respectively.

“(F) LIABILITY AT SUBTITLE D FACILITIES.—With respect to a codisposal landfill listed on the National Priorities List that is owned and operated by a small municipality, large municipality, or person other than municipalities, or a combination of thereof, and that is subject to the criteria for solid waste landfills published under subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) at part 258 of title 40, Code of Federal Regulations (or a successor regulation), the aggregate liability of such municipalities and persons shall be no greater than the costs of compliance with the requirements of subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) for the facility.

“(3) APPLICABILITY.—This subsection shall not apply to—

“(A) a person that acted in violation of subtitle C of the Solid Waste Disposal Act (42 U.S.C. Sec. 6921 et seq.);

“(B) a person that owned or operated a codisposal landfill in violation of the applicable requirements for municipal solid waste landfill

1 units under subtitle D of the Solid Waste Dis-
2 posal Act (42 U.S.C. Sec. 6941 et seq.) after
3 October 9, 1991;

4 “(C) a facility that was not operated pur-
5 suant to and in substantial compliance with any
6 other applicable permit, license, or other ap-
7 proval or authorization relating to municipal
8 solid waste or sewage sludge disposal issued by
9 an appropriate State, Indian tribe, or local gov-
10 ernment authority;

11 “(D) a person described in section 136(t);

12 or

13 “(E) a person that impedes the perform-
14 ance of a response action.”.

15 (c) EFFECTIVE DATE AND TRANSITION RULES.—

16 The amendments made by this section—

17 (1) shall take effect with respect to an action
18 under section 106, 107, or 113 of the Comprehen-
19 sive Environmental Response, Compensation, and
20 Liability Act of 1980 (42 U.S.C. 9606, 9607, and
21 9613) that becomes final on or after the date of en-
22 actment of this Act; but

23 (2) shall not apply to an action brought by any
24 person under section 107 or 113 of that Act (42

1 U.S.C. 9607 and 9613) for costs or damages in-
2 curred by the person before the date of enactment
3 of this Act.

4 **SEC. 502. CONTRIBUTION FROM THE FUND.**

5 Section 112 of the Comprehensive Environmental Re-
6 sponse, Compensation, and Liability Act of 1980 (42
7 U.S.C. 9612) is amended by adding at the end the follow-
8 ing:

9 “(g) CONTRIBUTION FROM THE FUND.—

10 “(1) COMPLETION OF OBLIGATIONS.—A person
11 that is subject to an administrative order issued
12 under section 106 or has entered into a settlement
13 decree with the United States or a State as of the
14 date of enactment of this subsection shall complete
15 the person’s obligations under the order or settle-
16 ment decree.

17 “(2) CONTRIBUTION.—A person described in
18 paragraph (1) shall receive contribution from the
19 Fund for any portion of the costs (excluding attor-
20 neys’ fees) incurred for the performance of the re-
21 sponse action after the date of enactment of this
22 subsection if the person is not liable for such costs
23 by reason of a liability exemption or limitation under
24 this section.

25 “(3) APPLICATION FOR CONTRIBUTION.—

1 “(A) IN GENERAL.—Contribution under
2 this section shall be made upon receipt by the
3 Administrator of an application requesting con-
4 tribution.

5 “(B) PERIODIC APPLICATIONS.—Beginning
6 with the 7th month after the date of enactment
7 of this subsection, 1 application for each facility
8 shall be submitted every 6 months for all per-
9 sons with contribution rights (as determined
10 under subparagraph (2)).

11 “(4) REGULATIONS.—Contribution shall be
12 made in accordance with such regulations as the Ad-
13 ministrator shall issue within 180 days after the
14 date of enactment of this section.

15 “(5) DOCUMENTATION.—The regulations under
16 paragraph (4) shall, at a minimum, require that an
17 application for contribution contain such documenta-
18 tion of costs and expenditures as the Administrator
19 considers necessary to ensure compliance with this
20 subsection.

21 “(6) EXPEDITION.—The Administrator shall
22 develop and implement such procedures as may be
23 necessary to provide contribution to such persons in

1 an expeditious manner, but in no case shall a con-
 2 tribution be made later than 1 year after submission
 3 of an application under this subsection.

4 “(7) CONSISTENCY WITH NATIONAL CONTIN-
 5 GENCY PLAN.—No contribution shall be made under
 6 this subsection unless the Administrator determines
 7 that such costs are consistent with the National
 8 Contingency Plan.”.

9 **SEC. 503. ALLOCATION OF LIABILITY FOR CERTAIN FACILI-**
 10 **TIES.**

11 Title I of the Comprehensive Environmental Re-
 12 sponse, Compensation, and Liability Act of 1980 (42
 13 U.S.C. 9601 et seq.), as amended by section 406, is
 14 amended by adding at the end the following:

15 **“SEC. 136. ALLOCATION OF LIABILITY FOR CERTAIN FA-**
 16 **CILITIES.**

17 “(a) DEFINITIONS.—In this section:

18 “(1) ALLOCATED SHARE.—The term ‘allocated
 19 share’ means the percentage of liability assigned to
 20 a potentially responsible party by the allocator in an
 21 allocation report under subsection (f)(4).

22 “(2) ALLOCATION PARTY.—The term ‘allocation
 23 party’—

24 “(A) means a party, named on a list of
 25 parties that will be subject to the allocation

1 process under this section, issued by an allo-
2 cator; and

3 “(B) with respect to a facility described in
4 subparagraph (4)(C), includes only parties that
5 are, by virtue of section 107(t)(3), not entitled
6 to the exemption under section 107(t)(1) or the
7 limitation under section 107(t)(2).

8 “(3) ALLOCATOR.—The term ‘allocator’ means
9 an allocator retained to conduct an allocation for a
10 facility.

11 “(4) MANDATORY ALLOCATION FACILITY.—The
12 term ‘mandatory allocation facility’ means—

13 “(A) a non-federally owned vessel or facil-
14 ity listed on the National Priorities List with
15 respect to which response costs are incurred
16 after the date of enactment of this section and
17 at which there are 2 or more potentially respon-
18 sive persons (including 1 or more persons that
19 are qualified for an exemption under section
20 107 (q), (r), or (s)), if at least 1 potentially re-
21 sponsible person is viable and not entitled to an
22 exemption under section 107 (q), (r), or (s);

23 “(B) a federally owned vessel or facility
24 listed on the National Priorities List with re-
25 spect to which response costs are incurred after

the date of enactment of this section, and with respect to which 1 or more potentially responsible parties (other than a department, agency, or instrumentality of the United States) are liable or potentially liable if at least 1 potentially liable party is liable and not entitled to an exemption under section 107 (q), (r), or (s); and

“(C) a codisposal landfill listed on the National Priorities List with respect to which—

“(i) costs are incurred after the date of enactment of this section; and

(ii) by virtue of section 107(t)(3), 1 or more persons are not entitled to the exemption under section 107(t)(1) or the limitation under section 107(t)(2).

“(5) ORPHAN SHARE.—The term ‘orphan share’ means the total of the allocated shares determined by the allocator under subsection (h).

“(b) ALLOCATIONS OF LIABILITY.—

“(1) MANDATORY ALLOCATIONS.—For each mandatory allocation facility involving 2 or more potentially responsible parties (including 1 or more potentially responsible parties that are qualified for an exemption under section 107 (q), (r), or (s)), the

1 Administrator shall conduct the allocation process
2 under this section.

3 “(2) REQUESTED ALLOCATIONS.—For a facility
4 (other than a mandatory allocation facility) involving
5 2 or more potentially responsible parties, the Admin-
6 istrator shall conduct the allocation process under
7 this section if the allocation is requested in writing
8 by a potentially responsible party that has—

9 “(A) incurred response costs with respect
10 to a response action; or

11 “(B) resolved any liability to the United
12 States with respect to a response action in
13 order to assist in allocating shares among po-
14 tentially responsible parties.

15 “(3) PERMISSIVE ALLOCATIONS.—For any fa-
16 cility (other than a mandatory allocation facility or
17 a facility with respect to which a request is made
18 under paragraph (2)) involving 2 or more potentially
19 responsible parties, the Administrator may conduct
20 the allocation process under this section if the Ad-
21 ministrator considers it to be appropriate to do so.

22 “(4) ORPHAN SHARE.—An allocation performed
23 at a vessel or facility identified under subsection (b)
24 (2) or (3) shall not require payment of an orphan

1 share under subsection (h) or contribution under
2 subsection (p).

3 “(5) EXCLUDED FACILITIES.—

4 “(A) IN GENERAL.—A codisposal landfill
5 listed on the Natural Priorities List at which
6 costs are incurred after January 1, 1997, and
7 at which all potentially responsible persons are
8 entitled to the liability exemption under section
9 107(t)(1). This section does not apply to a re-
10 sponse action at a mandatory allocation facility
11 for which there was in effect as of the date of
12 enactment of this section, a settlement, decree,
13 or order that determines the liability and allo-
14 cated shares of all potentially responsible par-
15 ties with respect to the response action.

16 “(B) AVAILABILITY OF ORPHAN SHARE.—

17 For any mandatory allocation facility that is
18 otherwise excluded by subparagraph (A) and for
19 which there was not in effect as of the date of
20 enactment of this section a final judicial order
21 that determined the liability of all parties to the
22 action for response costs incurred after the date
23 of enactment of this section, an allocation shall
24 be conducted for the sole purpose of determin-
25 ing the availability of orphan share funding

1 pursuant to subsection (h)(2) for any response
2 costs incurred after the date of enactment of
3 this section.

4 “(6) SCOPE OF ALLOCATIONS.—An allocation
5 under this section shall apply to—

6 “(A) response costs incurred after the date
7 of enactment of this section, with respect to a
8 mandatory allocation facility described in sub-
9 section (a)(4) (A), (B), or (C); and

10 “(B) response costs incurred at a facility
11 that is the subject of a requested or permissive
12 allocation under subsection (b) (2) or (3).

13 “(8) OTHER MATTERS.—This section shall not
14 limit or affect—

15 “(A) the obligation of the Administrator to
16 conduct the allocation process for a response
17 action at a facility that has been the subject of
18 a partial or expedited settlement with respect to
19 a response action that is not within the scope
20 of the allocation;

21 “(B) the ability of any person to resolve
22 any liability at a facility to any other person at
23 any time before initiation or completion of the
24 allocation process, subject to subsection (h)(3);

1 “(C) the validity, enforceability, finality, or
 2 merits of any judicial or administrative order,
 3 judgment, or decree, issued prior to the date of
 4 enactment of this section with respect to liabil-
 5 ity under this Act; or

6 “(D) the validity, enforceability, finality, or
 7 merits of any preexisting contract or agreement
 8 relating to any allocation of responsibility or
 9 any indemnity for, or sharing of, any response
 10 costs under this Act.

11 “(c) MORATORIUM ON LITIGATION AND ENFORCE-
 12 MENT.—

13 “(1) IN GENERAL.—No person may assert a
 14 claim for recovery of a response cost or contribution
 15 toward a response cost (including a claim for insur-
 16 ance proceeds) under this Act or any other Federal
 17 or State law in connection with a response action—

18 “(A) for which an allocation is required to
 19 be performed under subsection (b)(1); or

20 “(B) for which the Administrator has initi-
 21 ated the allocation process under this section,
 22 until the date that is 120 days after the date of issu-
 23 ance of a report by the allocator under subsection
 24 (f)(4) or, if a second or subsequent report is issued

1 under subsection (m), the date of issuance of the
2 second or subsequent report.

3 “(2) PENDING ACTIONS OR CLAIMS.—If a claim
4 described in paragraph (1) is pending on the date of
5 enactment of this section or on initiation of an allo-
6 cation under this section, the portion of the claim
7 pertaining to response costs that are the subject of
8 the allocation shall be stayed until the date that is
9 120 days after the date of issuance of a report by
10 the allocator under subsection (f)(4) or, if a second
11 or subsequent report is issued under subsection (m),
12 the date of issuance of the second or subsequent re-
13 port, unless the court determines that a stay would
14 result in manifest injustice.

15 “(3) TOLLING OF PERIOD OF LIMITATION.—

16 “(A) BEGINNING OF TOLLING.—Any appli-
17 cable period of limitation with respect to a
18 claim subject to paragraph (1) shall be tolled
19 beginning on the earlier of—

20 “(i) the date of listing of the facility
21 on the National Priorities List if the list-
22 ing occurs after the date of enactment of
23 this section; or

24 “(ii) the date of initiation of the allo-
25 cation process under this section.

1 “(B) END OF TOLLING.—A period of limi-
 2 tation shall be tolled under subparagraph (A)
 3 until the date that is 180 days after the date
 4 of issuance of a report by the allocator under
 5 subsection (f)(4), or of a second or subsequent
 6 report under subsection (m).

7 “(4) RETAINED AUTHORITY.—Except as spe-
 8 cifically provided in this section, this section does
 9 not affect the authority of the Administrator to—

10 “(A) exercise the powers conferred by sec-
 11 tion 103, 104, 105, 106, or 122;

12 “(B) commence an action against a party
 13 if there is a contemporaneous filing of a judicial
 14 consent decree resolving the liability of the
 15 party;

16 “(C) file a proof of claim or take other ac-
 17 tion in a proceeding under title 11, United
 18 States Code; or

19 “(D) require implementation of a response
 20 action at an allocation facility during the con-
 21 duct of the allocation process.

22 “(d) ALLOCATION PROCESS.—

23 “(1) ESTABLISHMENT.—Not later than 180
 24 days after the date of enactment of this section, the
 25 Administrator shall establish by regulation a process

1 for conduct of mandatory, requested, and permissive
2 allocations.

3 “(2) REQUIREMENTS.—In developing the allo-
4 cation process under paragraph (1), the Adminis-
5 trator shall—

6 “(A) ensure that parties that are eligible
7 for an exemption from liability under section
8 107 (q), (r), (s), (t), (v), and (w)—

9 “(i) are identified by the Adminis-
10 trator (before selection of an allocator or
11 by an allocator);

12 “(ii) at the earliest practicable oppor-
13 tunity, are notified of their status; and

14 “(iii) are provided with appropriate
15 written assurances that they are not liable
16 for response costs under this Act;

17 “(B) establish an expedited process for the
18 selection, appointment, and retention by con-
19 tract of a impartial allocator, acceptable to both
20 potentially responsible parties and a representa-
21 tive of the Fund, to conduct the allocation proc-
22 ess in a fair, efficient, and impartial manner;

23 “(C) permit any person to propose to name
24 additional potentially responsible parties as allo-
25 cation parties, the costs of any such nominated

1 party's costs (including reasonable attorney's
2 fees) to be borne by the party that proposes the
3 addition of the party to the allocation process
4 if the allocator determines that there is no ade-
5 quate basis in law or fact to conclude that a
6 party is liable based on the information pre-
7 sented by the nominating party or otherwise
8 available to the allocator; and

9 “(D) require that the allocator adopt any
10 settlement that allocates 100 percent of the re-
11 coverable costs of a response action at a facility
12 to the signatories to the settlement, if the set-
13 tlement contains a waiver of—

14 “(i) a right of recovery from any other
15 party of any response cost that is the sub-
16 ject of the allocation; and

17 “(ii) a right to contribution under this
18 Act,

19 with respect to any response action that is with-
20 in the scope of allocation process.

21 “(3) TIME LIMIT.—The Administrator shall ini-
22 tiate the allocation process for a facility not later
23 than the earlier of—

1 “(A) the date of completion of the facility
2 evaluation or remedial investigation for the fa-
3 cility; or

4 “(B) the date that is 60 days after the
5 date of selection of a removal action.

6 “(4) NO JUDICIAL REVIEW.—There shall be no
7 judicial review of any action regarding selection of
8 an allocator under the regulation issued under this
9 subsection.

10 “(5) RECOVERY OF CONTRACT COSTS.—The
11 costs of the Administrator in retaining an allocator
12 shall be considered to be a response cost for all pur-
13 poses of this Act.

14 “(e) FEDERAL, STATE, AND LOCAL AGENCIES.—

15 “(1) IN GENERAL.—Other than as set forth in
16 this Act, any Federal, State, or local governmental
17 department, agency, or instrumentality that is
18 named as a potentially responsible party or an allo-
19 cation party shall be subject to, and be entitled to
20 the benefits of, the allocation process and allocation
21 determination under this section to the same extent
22 as any other party.

1 “(2) ORPHAN SHARE.—The Administrator or
2 the Attorney General shall participate in the alloca-
3 tion proceeding as the representative of the Fund
4 from which any orphan share shall be paid.

5 “(f) ALLOCATION AUTHORITY.—

6 “(1) INFORMATION-GATHERING AUTHORI-
7 TIES.—

8 “(A) IN GENERAL.—An allocator may re-
9 quest information from any person in order to
10 assist in the efficient completion of the alloca-
11 tion process.

12 “(B) REQUESTS.—Any person may request
13 that an allocator request information under this
14 paragraph.

15 “(C) AUTHORITY.—An allocator may exer-
16 cise the information-gathering authority of the
17 Administrator under section 104(e), including
18 issuing an administrative subpoena to compel
19 the production of a document or the appearance
20 of a witness.

21 “(D) DISCLOSURE.—Notwithstanding any
22 other law, any information submitted to the al-
23 locator in response to a subpoena issued under

1 subparagraph (C) shall be exempt from disclo-
2 sure to any person under section 552 of title 5,
3 United States Code.

4 “(E) ORDERS.—In a case of contumacy or
5 failure of a person to obey a subpoena issued
6 under subparagraph (C), an allocator may re-
7 quest the Attorney General to—

8 “(i) bring a civil action to enforce the
9 subpoena; or

10 “(ii) if the person moves to quash the
11 subpoena, to defend the motion.

12 “(F) FAILURE OF ATTORNEY GENERAL TO
13 RESPOND.—If the Attorney General fails to
14 provide any response to the allocator within 30
15 days of a request for enforcement of a subpoena
16 or information request, the allocator may retain
17 counsel to commence a civil action to enforce
18 the subpoena or information request.

19 “(2) ADDITIONAL AUTHORITY.—An allocator
20 may—

21 “(A) schedule a meeting or hearing and re-
22 quire the attendance of allocation parties at the
23 meeting or hearing;

1 “(B) sanction an allocation party for fail-
 2 ing to cooperate with the orderly conduct of the
 3 allocation process;

4 “(C) require that allocation parties wishing
 5 to present similar legal or factual positions con-
 6 solidate the presentation of the positions;

7 “(D) obtain or employ support services, in-
 8 cluding secretarial, clerical, computer support,
 9 legal, and investigative services; and

10 “(E) take any other action necessary to
 11 conduct a fair, efficient, and impartial alloca-
 12 tion process.

13 “(3) CONDUCT OF ALLOCATION PROCESS.—

14 “(A) IN GENERAL.—The allocator shall
 15 conduct the allocation process and render a de-
 16 cision based solely on the provisions of this sec-
 17 tion, including the allocation factors described
 18 in subsection (g).

19 “(B) OPPORTUNITY TO BE HEARD.—Each
 20 allocation party shall be afforded an oppor-
 21 tunity to be heard (orally or in writing, at the
 22 option of an allocation party) and an oppor-
 23 tunity to comment on a draft allocation report.

24 “(C) RESPONSES.—The allocator shall not
 25 be required to respond to comments.

1 “(D) STREAMLINING.—The allocator shall
2 make every effort to streamline the allocation
3 process and minimize the cost of conducting the
4 allocation.

5 “(4) ALLOCATION REPORT.—The allocator shall
6 provide a written allocation report to the Adminis-
7 trator and the allocation parties that specifies the al-
8 location share of each allocation party and any or-
9 phan shares, as determined by the allocator.

10 “(g) EQUITABLE FACTORS FOR ALLOCATION.—The
11 allocator shall prepare a nonbinding allocation of percent-
12 age shares of responsibility to each allocation party and
13 to the orphan share, in accordance with this section and
14 without regard to any theory of joint and several liability,
15 based on—

16 “(1) the amount of hazardous substances con-
17 tributed by each allocation party;

18 “(2) the degree of toxicity of hazardous sub-
19 stances contributed by each allocation party;

20 “(3) the mobility of hazardous substances con-
21 tributed by each allocation party;

22 “(4) the degree of involvement of each alloca-
23 tion party in the generation, transportation, treat-
24 ment, storage, or disposal of hazardous substances;

1 “(5) the degree of care exercised by each alloca-
2 tion party with respect to hazardous substances, tak-
3 ing into account the characteristics of the hazardous
4 substances;

5 “(6) the cooperation of each allocation party in
6 contributing to any response action and in providing
7 complete and timely information to the allocator;
8 and

9 “(7) such other equitable factors as the allo-
10 cator determines are appropriate.

11 “(h) ORPHAN SHARES.—

12 “(1) IN GENERAL.—The allocator shall deter-
13 mine whether any percentage of responsibility for
14 the response action shall be allocable to the orphan
15 share.

16 “(2) MAKEUP OF ORPHAN SHARE.—The orphan
17 share shall consist of—

18 “(A) any share that the allocator deter-
19 mines is attributable to an allocation party that
20 is insolvent or defunct and that is not affiliated
21 with any financially viable allocation party;

1 “(B) the difference between the aggregate
2 share that the allocator determines is attrib-
3 utable to a person and the aggregate share ac-
4 tually assumed by the person in a settlement
5 with the United States otherwise if—

6 “(i) the person is eligible for an expe-
7 dited settlement with the United States
8 under section 122 based on limited ability
9 to pay response costs;

10 “(ii) the liability of the person is
11 eliminated, limited, or reduced by any pro-
12 vision of this Act; or

13 “(iii) the person settled with the Unit-
14 ed States before the completion of the allo-
15 cation; and

16 “(C) all response costs at a codisposal
17 landfill listed on the National Priorities in-
18 curred after the date of enactment of this sec-
19 tion attributable to any person or group of per-
20 sons entitled to an exemption or limitation
21 under section 107 (q), (r), (s), or (t).

22 “(4) UNATTRIBUTABLE SHARES.—A share at-
23 tributable to a hazardous substance that the allo-
24 cator determines was disposed at the facility that
25 cannot be attributed to any identifiable party shall

1 be distributed among the allocation parties and the
2 orphan share in accordance with the allocated share
3 assigned to each.

4 “(i) INFORMATION REQUESTS.—

5 “(1) DUTY TO ANSWER.—Each person that re-
6 ceives an information request or subpoena from the
7 allocator shall provide a full and timely response to
8 the request.

9 “(2) CERTIFICATION.—An answer to an infor-
10 mation request by an allocator shall include a certifi-
11 cation by a representative that meets the criteria es-
12 tablished in section 270.11(a) of title 40, Code of
13 Federal Regulations (or any successor regulation),
14 that—

15 “(A) the answer is correct to the best of
16 the representative’s knowledge;

17 “(B) the answer is based on a diligent
18 good faith search of records in the possession or
19 control of the person to whom the request was
20 directed;

21 “(C) the answer is based on a reasonable
22 inquiry of the current (as of the date of the an-
23 swer) officers, directors, employees, and agents
24 of the person to whom the request was directed;

1 “(D) the answer accurately reflects infor-
 2 mation obtained in the course of conducting the
 3 search and the inquiry;

4 “(E) the person executing the certification
 5 understands that there is a duty to supplement
 6 any answer if, during the allocation process,
 7 any significant additional, new, or different in-
 8 formation becomes known or available to the
 9 person; and

10 “(F) the person executing the certification
 11 understands that there are significant penalties
 12 for submitting false information, including the
 13 possibility of a fine or imprisonment for a
 14 knowing violation.

15 “(j) PENALTIES.—

16 “(1) CIVIL.—

17 “(A) IN GENERAL.—A person that fails to
 18 submit a complete and timely answer to an in-
 19 formation request, a request for the production
 20 of a document, or a summons from an allo-
 21 cator, submits a response that lacks the certifi-
 22 cation required under subsection (i)(2), or
 23 knowingly makes a false or misleading material
 24 statement or representation in any statement,
 25 submission, or testimony during the allocation

1 process (including a statement or representa-
2 tion in connection with the nomination of an-
3 other potentially responsible party) shall be sub-
4 ject to a civil penalty of not more than \$10,000
5 per day of violation.

6 “(B) ASSESSMENT OF PENALTY.—A pen-
7 alty may be assessed by the Administrator in
8 accordance with section 109 or by any alloca-
9 tion party in a citizen suit brought under sec-
10 tion 310.

11 “(2) CRIMINAL.—A person that knowingly and
12 willfully makes a false material statement or rep-
13 resentation in the response to an information re-
14 quest or subpoena issued by the allocator under sub-
15 section (i) shall be considered to have made a false
16 statement on a matter within the jurisdiction of the
17 United States within the meaning of section 1001 of
18 title 18, United States Code.

19 “(k) DOCUMENT REPOSITORY; CONFIDENTIALITY.—

20 “(1) DOCUMENT REPOSITORY.—

21 “(A) IN GENERAL.—The allocator shall es-
22 tablish and maintain a document repository

1 containing copies of all documents and informa-
2 tion provided by the Administrator or any allo-
3 cation party under this section or generated by
4 the allocator during the allocation process.

5 “(B) AVAILABILITY.—Subject to para-
6 graph (2), the documents and information in
7 the document repository shall be available only
8 to an allocation party for review and copying at
9 the expense of the allocation party.

10 “(2) CONFIDENTIALITY.—

11 “(A) IN GENERAL.—Each document or
12 material submitted to the allocator or placed in
13 the document repository and the record of any
14 information generated or obtained during the
15 allocation process shall be confidential.

16 “(B) MAINTENANCE.—The allocator, each
17 allocation party, the Administrator, and the At-
18 torney General—

19 “(i) shall maintain the documents,
20 materials, and records of any depositions
21 or testimony adduced during the allocation
22 as confidential; and

1 “(ii) shall not use any such document
2 or material or the record in any other mat-
3 ter or proceeding or for any purpose other
4 than the allocation process.

5 “(C) DISCLOSURE.—Notwithstanding any
6 other law, the documents and materials and the
7 record shall not be subject to disclosure to any
8 person under section 552 of title 5, United
9 States Code.

10 “(D) DISCOVERY AND ADMISSIBILITY.—

11 “(i) IN GENERAL.—Subject to clause
12 (ii), the documents and materials and the
13 record shall not be subject to discovery or
14 admissible in any other Federal, State, or
15 local judicial or administrative proceeding,
16 except—

17 “(I) a new allocation under sub-
18 section (m) or (r) for the same re-
19 sponse action; or

20 “(II) an initial allocation under
21 this section for a different response
22 action at the same facility.

23 “(ii) OTHERWISE DISCOVERABLE OR
24 ADMISSIBLE.—

1 “(I) DOCUMENT OR MATERIAL.—

2 If the original of any document or
3 material submitted to the allocator or
4 placed in the document repository was
5 otherwise discoverable or admissible
6 from a party, the original document,
7 if subsequently sought from the party,
8 shall remain discoverable or admissi-
9 ble.

10 “(II) FACTS.—If a fact gen-
11 erated or obtained during the alloca-
12 tion was otherwise discoverable or ad-
13 missible from a witness, testimony
14 concerning the fact, if subsequently
15 sought from the witness, shall remain
16 discoverable or admissible.

17 “(3) NO WAIVER OF PRIVILEGE.—The submis-
18 sion of testimony, a document, or information under
19 the allocation process shall not constitute a waiver of
20 any privilege applicable to the testimony, document,
21 or information under any Federal or State law or
22 rule of discovery or evidence.

23 “(4) PROCEDURE IF DISCLOSURE SOUGHT.—

24 “(A) NOTICE.—A person that receives a
25 request for a statement, document, or material

1 submitted for the record of an allocation pro-
2 ceeding, shall—

3 “(i) promptly notify the person that
4 originally submitted the item or testified in
5 the allocation proceeding; and

6 “(ii) provide the person that originally
7 submitted the item or testified in the allo-
8 cation proceeding an opportunity to assert
9 and defend the confidentiality of the item
10 or testimony.

11 “(B) RELEASE.—No person may release or
12 provide a copy of a statement, document, or
13 material submitted, or the record of an alloca-
14 tion proceeding, to any person not a party to
15 the allocation except—

16 “(i) with the written consent of the
17 person that originally submitted the item
18 or testified in the allocation proceeding; or

19 “(ii) as may be required by court
20 order.

21 “(5) CIVIL PENALTY.—

22 “(A) IN GENERAL.—A person that fails to
23 maintain the confidentiality of any statement,
24 document, or material or the record generated
25 or obtained during an allocation proceeding, or

1 that releases any information in violation of this
2 section, shall be subject to a civil penalty of not
3 more than \$25,000 per violation.

4 “(B) ASSESSMENT OF PENALTY.—A pen-
5 alty may be assessed by the Administrator in
6 accordance with section 109 or by any alloca-
7 tion party in a citizen suit brought under sec-
8 tion 310.

9 “(C) DEFENSES.—In any administrative
10 or judicial proceeding, it shall be a complete de-
11 fense that any statement, document, or material
12 or the record at issue under subparagraph
13 (A)—

14 “(i) was in, or subsequently became
15 part of, the public domain, and did not be-
16 come part of the public domain as a result
17 of a violation of this subsection by the per-
18 son charged with the violation;

19 “(ii) was already known by lawful
20 means to the person receiving the informa-
21 tion in connection with the allocation proc-
22 ess; or

23 “(iii) became known to the person re-
24 ceiving the information after disclosure in
25 connection with the allocation process and

1 did not become known as a result of any
 2 violation of this subsection by the person
 3 charged with the violation.

4 “(1) REJECTION OF ALLOCATION REPORT.—

5 “(1) REJECTION.—The Administrator and the
 6 Attorney General may jointly reject a report issued
 7 by an allocator only if the Administrator and the At-
 8 torney General jointly publish, not later than 180
 9 days after the Administrator receives the report, a
 10 written determination that—

11 “(A) no rational interpretation of the facts
 12 before the allocator, in light of the factors re-
 13 quired to be considered, would form a reason-
 14 able basis for the shares assigned to the parties;
 15 or

16 “(B) the allocation process was directly
 17 and substantially affected by bias, procedural
 18 error, fraud, or unlawful conduct.

19 “(2) FINALITY.—A report issued by an allo-
 20 cator may not be rejected after the date that is 180
 21 days after the date on which the United States ac-
 22 cepts a settlement offer (excluding an expedited set-
 23 tlement under section 122) based on the allocation.

24 “(3) JUDICIAL REVIEW.—Any determination by
 25 the Administrator or the Attorney General under

1 this subsection shall not be subject to judicial review
2 unless 2 successive allocation reports relating to the
3 same response action are rejected, in which case any
4 allocation party may obtain judicial review of the
5 second rejection in a United States district court
6 under subchapter II of chapter 5 of part I of title
7 5, United States Code.

8 “(4) DELEGATION.—The authority to make a
9 determination under this subsection may not be dele-
10 gated to any officer or employee below the level of
11 an Assistant Administrator or Acting Assistant Ad-
12 ministrator or an Assistant Attorney General or Act-
13 ing Assistant Attorney General with authority for
14 implementing this Act.

15 “(m) SECOND AND SUBSEQUENT ALLOCATIONS.—

16 “(1) IN GENERAL.—If a report is rejected
17 under subsection (l), the allocation parties shall se-
18 lect an allocator to perform, on an expedited basis,
19 a new allocation based on the same record available
20 to the previous allocator.

21 “(2) MORATORIUM AND TOLLING.—The mora-
22 torium and tolling provisions of subsection (c) shall
23 be extended until the date that is 180 days after the
24 date of the issuance of any second or subsequent al-
25 location report under paragraph (1).

1 “(3) SAME ALLOCATOR.—The allocation parties
 2 may select the same allocator who performed 1 or
 3 more previous allocations at the facility, except that
 4 the Administrator may determine that an allocator
 5 whose previous report at the same facility has been
 6 rejected under subsection (l) is unqualified to serve.

7 “(n) SETTLEMENTS BASED ON ALLOCATIONS.—

8 “(1) DEFINITION.—In this subsection, the term
 9 ‘all settlements’ includes any orphan share allocated
 10 under subsection (h).

11 “(2) IN GENERAL.—Unless an allocation report
 12 is rejected under subsection (l), any allocation party
 13 at a mandatory allocation facility (including an allo-
 14 cation party whose allocated share is funded par-
 15 tially or fully by orphan share funding under sub-
 16 section (h)) shall be entitled to resolve the liability
 17 of the party to the United States for response ac-
 18 tions subject to allocation if, not later than 90 days
 19 after the date of issuance of a report by the allo-
 20 cator, the party—

21 “(A) offers to settle with the United States
 22 based on the allocated share specified by the al-
 23 locator; and

24 “(B) agrees to the other terms and condi-
 25 tions stated in this subsection.

1 “(3) PROVISIONS OF SETTLEMENTS.—

2 “(A) IN GENERAL.—A settlement based on
3 an allocation under this section—

4 “(i) may consist of a cash-out settle-
5 ment or an agreement for the performance
6 of a response action; and

7 “(ii) shall include—

8 “(I) a waiver of contribution
9 rights against all persons that are po-
10 tentially responsible parties for any
11 response action addressed in the set-
12 tlement;

13 “(II) a covenant not to sue that
14 is consistent with section 122(f) and,
15 except in the case of a cash-out settle-
16 ment, provisions regarding perform-
17 ance or adequate assurance of per-
18 formance of the response action;

19 “(III) a premium, calculated on a
20 facility-specific basis and subject to
21 the limitations on premiums stated in
22 paragraph (5), that reflects the actual
23 risk to the United States of not col-
24 lecting unrecovered response costs for

1 the response action, despite the dili-
2 gent prosecution of litigation against
3 any viable allocation party that has
4 not resolved the liability of the party
5 to the United States, except that no
6 premium shall apply if all allocation
7 parties participate in the settlement
8 or if the settlement covers 100 per-
9 cent of the response costs subject to
10 the allocation;

11 “(IV) complete protection from
12 all claims for contribution regarding
13 the response action addressed in the
14 settlement; and

15 “(V) provisions through which a
16 settling party shall receive prompt
17 contribution from the Fund under
18 subsection (o) of any response costs
19 incurred by the party for any response
20 action that is the subject of the alloca-
21 tion in excess of the allocated share of
22 the party, including the allocated por-
23 tion of any orphan share.

24 “(B) RIGHT TO CONTRIBUTION.—A right
25 to contribution under subparagraph (A)(ii)(V)

1 shall not be contingent on recovery by the Unit-
2 ed States of any response costs from any person
3 other than the settling party.

4 “(4) REPORT.—The Administrator shall report
5 annually to Congress on the administration of the
6 allocation process under this section, providing in
7 the report—

8 “(A) information comparing allocation re-
9 sults with actual settlements at multiparty fa-
10 cilities;

11 “(B) a cumulative analysis of response ac-
12 tion costs recovered through post-allocation liti-
13 gation or settlements of post-allocation litiga-
14 tion;

15 “(C) a description of any impediments to
16 achieving complete recovery; and

17 “(D) a complete accounting of the costs in-
18 curred in administering and participating in the
19 allocation process.

20 “(5) PREMIUM.—In each settlement under this
21 subsection, the premium authorized—

22 “(A) shall be determined on a case-by-case
23 basis to reflect the actual litigation risk faced
24 by the United States with respect to any re-
25 sponse action addressed in the settlement; but

1 “(B) shall not exceed—

2 “(i) 5 percent of the total costs as-
3 sumed by a settling party if all settlements
4 (including any orphan share) account for
5 more than 80 percent and less than 100
6 percent of responsibility for the response
7 action;

8 “(ii) 10 percent of the total costs as-
9 sumed by a settling party if all settlements
10 (including any orphan share) account for
11 more than 60 percent and not more than
12 80 percent of responsibility for the re-
13 sponse action;

14 “(iii) 15 percent of the total costs as-
15 sumed by a settling party if all settlements
16 (including any orphan share) account for
17 more than 40 percent and not more than
18 60 percent of responsibility for the re-
19 sponse action; or

20 “(iv) 20 percent of the total costs as-
21 sumed by a settling party if all settlements
22 (including any orphan share) account for
23 40 percent or less of responsibility for the
24 response; and

1 “(C) shall be reduced proportionally by the
2 percentage of the allocated share for that party
3 paid through orphan funding under subsection
4 (h).

5 “(o) FUNDING OF ORPHAN SHARES.—

6 “(1) CONTRIBUTION.—For each settlement
7 agreement entered into under subsection (n), the
8 Administrator shall promptly reimburse the alloca-
9 tion parties for any costs incurred that are attrib-
10 utable to the orphan share, as determined by the al-
11 locator.

12 “(2) ENTITLEMENT.—Paragraph (1) con-
13 stitutes an entitlement to any allocation party eligi-
14 ble to receive a reimbursement.

15 “(3) AMOUNTS OWED.—

16 “(A) DELAY IF FUNDS ARE UNAVAIL-
17 ABLE.—If funds are unavailable in any fiscal
18 year to reimburse all allocation parties pursuant
19 to paragraph (1), the Administrator may delay
20 payment until funds are available.

21 “(B) PRIORITY.—The priority for reim-
22 bursement shall be based on the length of time
23 that has passed since the settlement between
24 the United States and the allocation parties
25 pursuant to subsection (n).

1 “(C) PAYMENT FROM FUNDS MADE AVAIL-
 2 ABLE IN SUBSEQUENT FISCAL YEARS.—Any
 3 amount due and owing in excess of available ap-
 4 propriations in any fiscal year shall be paid
 5 from amounts made available in subsequent fis-
 6 cal years, along with interest on the unpaid bal-
 7 ances at the rate equal to that of the current
 8 average market yield on outstanding marketable
 9 obligations of the United States with a maturity
 10 of 1 year.

11 “(4) DOCUMENTATION AND AUDITING.—The
 12 Administrator—

13 “(A) shall require that any claim for con-
 14 tribution be supported by documentation of ac-
 15 tual costs incurred; and

16 “(B) may require an independent auditing
 17 of any claim for contribution.

18 “(p) POST-ALLOCATION CONTRIBUTION.—

19 “(1) IN GENERAL.—An allocation party (includ-
 20 ing a party that is subject to an order under section
 21 106 or a settlement decree) that incurs costs after
 22 the date of enactment of this section for implemen-
 23 tation of a response action that is the subject of an
 24 allocation under this section to an extent that ex-
 25 ceeds the percentage share of the allocation party, as

1 determined by the allocator, shall be entitled to
 2 prompt payment of contribution for the excess
 3 amount, including any orphan share, from the Fund,
 4 unless the allocation report is rejected under sub-
 5 section (1).

6 “(2) NOT CONTINGENT.—The right to contribu-
 7 tion under paragraph (1) shall not be contingent on
 8 recovery by the United States of a response cost
 9 from any other person.

10 “(3) TERMS AND CONDITIONS.—

11 “(A) RISK PREMIUM.—A contribution pay-
 12 ment shall be reduced by the amount of the liti-
 13 gation risk premium under subsection (n)(5)
 14 that would apply to a settlement by the alloca-
 15 tion party concerning the response action, based
 16 on the total allocated shares of the parties that
 17 have not reached a settlement with the United
 18 States.

19 “(B) TIMING.—

20 “(i) IN GENERAL.—A contribution
 21 payment shall be paid out during the
 22 course of the response action that was the
 23 subject of the allocation, using reasonable
 24 progress payments at significant mile-
 25 stones.

1 “(ii) CONSTRUCTION.—Contribution
2 for the construction portion of the work
3 shall be paid out not later than 120 days
4 after the date of completion of the con-
5 struction.

6 “(C) EQUITABLE OFFSET.—A contribution
7 payment is subject to equitable offset or
8 recoupment by the Administrator at any time if
9 the allocation party fails to perform the work in
10 a proper and timely manner.

11 “(D) INDEPENDENT AUDITING.—The Ad-
12 ministrator may require independent auditing
13 of any claim for contribution.

14 “(E) WAIVER.—An allocation party seek-
15 ing contribution waives the right to seek recov-
16 ery of response costs in connection with the re-
17 sponse action, or contribution toward the re-
18 sponse costs, from any other person.

19 “(F) BAR.—An administrative order shall
20 be in lieu of any action by the United States or
21 any other person against the allocation party
22 for recovery of response costs in connection
23 with the response action, or for contribution to-
24 ward the costs of the response action.

25 “(q) POST-SETTLEMENT LITIGATION.—

1 “(1) IN GENERAL.—Subject to subsections (m)
2 and (n), and on the expiration of the moratorium
3 period under subsection (c)(4), the Administrator
4 may commence an action under section 107 against
5 an allocation party that has not resolved the liability
6 of the party to the United States following allocation
7 and may seek to recover response costs not recov-
8 ered through settlements with other persons.

9 “(2) ORPHAN SHARE.—The recoverable costs
10 shall include any orphan share determined under
11 subsection (h), but shall not include any share allo-
12 cated to a Federal, State, or local governmental
13 agency, department, or instrumentality.

14 “(3) IMPLER.—A defendant in an action
15 under paragraph (1) may implead an allocation
16 party only if the allocation party did not resolve li-
17 ability to the United States.

18 “(4) CERTIFICATION.—In commencing or main-
19 taining an action under section 107 against an allo-
20 cation party after the expiration of the moratorium
21 period under subsection (c)(4), the Attorney General
22 shall certify in the complaint that the defendant
23 failed to settle the matter based on the share that
24 the allocation report assigned to the party.

25 “(5) RESPONSE COSTS.—

1 “(A) ALLOCATION PROCEDURE.—The cost
 2 of implementing the allocation procedure under
 3 this section, including reasonable fees and ex-
 4 penses of the allocator, shall be considered as a
 5 necessary response cost.

6 “(B) FUNDING OF ORPHAN SHARES.—The
 7 cost attributable to funding an orphan share
 8 under this section—

9 “(i) shall be considered as a necessary
 10 cost of response cost; and

11 “(ii) shall be recoverable in accord-
 12 ance with section 107 only from an alloca-
 13 tion party that does not reach a settlement
 14 and does not receive an administrative
 15 order under subsection (n) or (p).

16 “(r) NEW INFORMATION.—

17 “(1) IN GENERAL.—An allocation under this
 18 section shall be final, except that any settling party,
 19 including the United States, may seek a new alloca-
 20 tion with respect to the response action that was the
 21 subject of the settlement by presenting the Adminis-
 22 trator with clear and convincing evidence that—

23 “(A) the allocator did not have information
 24 concerning—

1 “(i) 35 percent or more of the mate-
2 rials containing hazardous substances at
3 the facility; or

4 “(ii) 1 or more persons not previously
5 named as an allocation party that contrib-
6 uted 15 percent or more of materials con-
7 taining hazardous substances at the facil-
8 ity; and

9 “(B) the information was discovered subse-
10 quent to the issuance of the report by the allo-
11 cator.

12 “(2) NEW ALLOCATION.—Any new allocation of
13 responsibility—

14 “(A) shall proceed in accordance with this
15 section;

16 “(B) shall be effective only after the date
17 of the new allocation report; and

18 “(C) shall not alter or affect the original
19 allocation with respect to any response costs
20 previously incurred.

21 “(s) DISCRETION OF ALLOCATOR.—A contract by
22 which the Administrator retain an allocator shall give the
23 allocator broad discretion to conduct the allocation process

1 in a fair, efficient, and impartial manner, and the Admin-
 2 istrator shall not issue any rule or order that limits the
 3 discretion of the allocator in the conduct of the allocation.

4 “(t) ILLEGAL ACTIVITIES.—Section 107 (o), (p), (q),
 5 (r), (s), (t), (u), (v), and (w) and section 112(g) shall not
 6 apply to any person whose liability for response costs
 7 under section 107(a)(1) is otherwise based on any act,
 8 omission, or status that is determined by a court or ad-
 9 ministrative body of competent jurisdiction, within the ap-
 10 plicable statute of limitation, to have been a violation of
 11 any Federal or State law pertaining to the treatment, stor-
 12 age, disposal, or handling of hazardous substances if the
 13 violation pertains to a hazardous substance, the release
 14 or threat of release of which caused the incurrence of re-
 15 sponse costs at the vessel or facility.”.

16 **SEC. 504. LIABILITY OF RESPONSE ACTION CONTRACTORS.**

17 (a) LIABILITY OF CONTRACTORS.—Section 101(20)
 18 of the Comprehensive Environmental Response, Com-
 19 pensation, and Liability Act of 1980 (42 U.S.C. 9601(20))
 20 is amended by adding at the end the following:

21 “(H) LIABILITY OF CONTRACTORS.—

22 “(i) IN GENERAL.—The term ‘owner
 23 or operator’ does not include a response
 24 action contractor (as defined in section
 25 119(e)).

1 “(ii) LIABILITY LIMITATIONS.—A per-
2 son described in clause (i) shall not, in the
3 absence of negligence by the person, be
4 considered to—

5 “(I) cause or contribute to any
6 release or threatened release of a haz-
7 ardous substance, pollutant, or con-
8 taminant;

9 “(II) arrange for disposal or
10 treatment of a hazardous substance,
11 pollutant, or contaminant;

12 “(III) arrange with a transporter
13 for transport or disposal or treatment
14 of a hazardous substance, pollutant,
15 or contaminant; or

16 “(IV) transport a hazardous sub-
17 stance, pollutant, or contaminant.

18 “(iii) EXCEPTION.—This subpara-
19 graph does not apply to a person poten-
20 tially responsible under section 106 or 107
21 other than a person associated solely with
22 the provision of a response action or a
23 service or equipment ancillary to a re-
24 sponse action.”.

1 (b) NATIONAL UNIFORM NEGLIGENCE STANDARD.—
 2 Section 119(a) of the Comprehensive Environmental Re-
 3 sponse, Compensation, and Liability Act of 1980 (42
 4 U.S.C. 9619(a)) is amended—

5 (1) in paragraph (1) by striking “title or under
 6 any other Federal law” and inserting “title or under
 7 any other Federal or State law”; and

8 (2) in paragraph (2)—

9 (A) by striking “(2) NEGLIGENCE, ETC.—
 10 Paragraph (1)” and inserting the following:

11 “(2) NEGLIGENCE AND INTENTIONAL MIS-
 12 CONDUCT; APPLICATION OF STATE LAW.—

13 “(A) NEGLIGENCE AND INTENTIONAL MIS-
 14 CONDUCT.—

15 “(i) IN GENERAL.—Paragraph (1)”;

16 and

17 (B) by adding at the end the following:

18 “(ii) STANDARD.—Conduct under
 19 clause (i) shall be evaluated based on the
 20 generally accepted standards and practices
 21 in effect at the time and place at which the
 22 conduct occurred.

23 “(iii) PLAN.—An activity performed
 24 in accordance with a plan that was ap-
 25 proved by the Administrator shall not be

1 considered to constitute negligence under
2 clause (i).

3 “(B) APPLICATION OF STATE LAW.—Para-
4 graph (1) shall not apply in determining the li-
5 ability of a response action contractor under the
6 law of a State if the State has adopted by stat-
7 ute a law determining the liability of a response
8 action contractor.”.

9 (c) EXTENSION OF INDEMNIFICATION AUTHORITY.—
10 Section 119(c)(1) of the Comprehensive Environmental
11 Response, Compensation, and Liability Act of 1980 (42
12 U.S.C. 9619(c)(1)) is amended by adding at the end the
13 following: “The agreement may apply to a claim for neg-
14 ligence arising under Federal or State law.”.

15 (d) INDEMNIFICATION DETERMINATIONS.—Section
16 119(c) of the Comprehensive Environmental Response,
17 Compensation, and Liability Act of 1980 (42 U.S.C.
18 9619(c)) is amended by striking paragraph (4) and insert-
19 ing the following:

20 “(4) DECISION TO INDEMNIFY.—

21 “(A) IN GENERAL.—For each response ac-
22 tion contract for a vessel or facility, the Admin-
23 istrator shall make a decision whether to enter
24 into an indemnification agreement with a re-
25 sponse action contractor.

1 “(B) STANDARD.—The Administrator shall
2 enter into an indemnification agreement to the
3 extent that the potential liability (including the
4 risk of harm to public health, safety, environ-
5 ment, and property) involved in a response ac-
6 tion exceed or are not covered by insurance
7 available to the contractor at the time at which
8 the response action contract is entered into that
9 is likely to provide adequate long-term protec-
10 tion to the public for the potential liability on
11 fair and reasonable terms (including consider-
12 ation of premium, policy terms, and
13 deductibles).

14 “(C) DILIGENT EFFORTS.—The Adminis-
15 trator shall enter into an indemnification agree-
16 ment only if the Administrator determines that
17 the response action contractor has made dili-
18 gent efforts to obtain insurance coverage from
19 non-Federal sources to cover potential liabil-
20 ities.

21 “(D) CONTINUED DILIGENT EFFORTS.—
22 An indemnification agreement shall require the
23 response action contractor to continue, not
24 more frequently than annually, to make diligent

1 efforts to obtain insurance coverage from non-
 2 Federal sources to cover potential liabilities.

3 “(E) LIMITATIONS ON INDEMNIFICA-
 4 TION.—An indemnification agreement provided
 5 under this subsection shall include deductibles
 6 and shall place limits on the amount of indem-
 7 nification made available in amounts deter-
 8 mined by the contracting agency to be appro-
 9 priate in light of the unique risk factors associ-
 10 ated with the cleanup activity.”.

11 (e) INDEMNIFICATION FOR THREATENED RE-
 12 LEASES.—Section 119(c)(5)(A) of the Comprehensive En-
 13 vironmental Response, Compensation, and Liability Act of
 14 1980 (42 U.S.C. 9619(c)(5)(A)) is amended by inserting
 15 “or threatened release” after “release” each place it ap-
 16 pears.

17 (f) EXTENSION OF COVERAGE TO ALL RESPONSE
 18 ACTIONS.—Section 119(e)(1) of the Comprehensive Envi-
 19 ronmental Response, Compensation, and Liability Act of
 20 1980 (42 U.S.C. 9619(e)(1)) is amended—

21 (1) in subparagraph (D) by striking “carrying
 22 out an agreement under section 106 or 122”; and
 23 (2) in the matter following subparagraph (D)—

1 (A) by striking “any remedial action under
 2 this Act at a facility listed on the National Pri-
 3 orities List, or any removal under this Act,”
 4 and inserting “any response action,”; and

5 (B) by inserting before the period at the
 6 end the following: “or to undertake appropriate
 7 action necessary to protect and restore any nat-
 8 ural resource damaged by the release or threat-
 9 ened release”.

10 (g) DEFINITION OF RESPONSE ACTION CONTRAC-
 11 TOR.—Section 119(e)(2)(A)(i) of the Comprehensive Envi-
 12 ronmental Response, Compensation, and Liability Act of
 13 1980 (42 U.S.C. 9619(e)(2)(A)(i)) is amended by striking
 14 “and is carrying out such contract” and inserting “cov-
 15 ered by this section and any person (including any sub-
 16 contractor) hired by a response action contractor”.

17 (h) SURETY BONDS.—Section 119 of the Comprehen-
 18 sive Environmental Response, Compensation, and Liabil-
 19 ity Act of 1980 (42 U.S.C. 9619) is amended—

20 (1) in subsection (e)(2)(C) by striking “, and
 21 before January 1, 1996,”; and

22 (2) in subsection (g)(5) by striking “, or after
 23 December 31, 1995”.

24 (i) NATIONAL UNIFORM STATUTE OF REPOSE.—Sec-
 25 tion 119 of the Comprehensive Environmental Response,

1 Compensation, and Liability Act of 1980 (42 U.S.C.
2 9619) is amended by adding at the end the following:

3 “(h) LIMITATION ON ACTIONS AGAINST RESPONSE
4 ACTION CONTRACTORS.—

5 “(1) IN GENERAL.—No action may be brought
6 as a result of the performance of services under a
7 response contract against a response action contrac-
8 tor after the date that is 7 years after the date of
9 completion of work at any facility under the contract
10 to recover—

11 “(A) injury to property, real or personal;

12 “(B) personal injury or wrongful death;

13 “(C) other expenses or costs arising out of
14 the performance of services under the contract;
15 or

16 “(D) contribution or indemnity for dam-
17 ages sustained as a result of an injury de-
18 scribed in subparagraphs (A) through (C).

19 “(2) EXCEPTION.—Paragraph (1) does not bar
20 recovery for a claim caused by the conduct of the re-
21 sponse action contractor that is grossly negligent or
22 that constitutes intentional misconduct.

1 “(3) INDEMNIFICATION.—This subsection does
2 not affect any right of indemnification that a re-
3 sponse action contractor may have under this section
4 or may acquire by contract with any person.

5 “(i) STATE STANDARDS OF REPOSE.—Subsections
6 (a)(1) and (h) shall not apply in determining the liability
7 of a response action contractor if the State has enacted
8 a statute of repose determining the liability of a response
9 action contractor.”.

10 **SEC. 505. RELEASE OF EVIDENCE.**

11 (a) TIMELY ACCESS TO INFORMATION FURNISHED
12 UNDER SECTION 104(e).—Section 104(e)(7)(A) of the
13 Comprehensive Environmental Response, Compensation,
14 and Liability Act of 1980 (42 U.S.C. 9604(e)(7)(A)) is
15 amended by inserting after “shall be available to the pub-
16 lic” the following: “not later than 14 days after the
17 records, reports, or information is obtained”.

18 (b) REQUIREMENT TO PROVIDE POTENTIALLY RE-
19 SPONSIBLE PARTIES EVIDENCE OF LIABILITY.—

20 (1) ABATEMENT ACTIONS.—Section 106(a) of
21 the Comprehensive Environmental Response, Com-
22 pensation, and Liability Act of 1980 (42 U.S.C.
23 9606(a)) is amended—

24 (A) by striking “(a) In addition” and in-
25 serting the following: “(a) ORDER.—”

1 “(1) IN GENERAL.—In addition”; and

2 (B) by adding at the end the following:

3 “(2) CONTENTS OF ORDER.—An order under
4 paragraph (1) shall provide information concerning
5 the evidence that indicates that each element of li-
6 ability described in section 107(a)(1) (A), (B), (C),
7 and (D), as applicable, is present.”.

8 (2) SETTLEMENTS.—Section 122(e)(1) of the
9 Comprehensive Environmental Response, Compensa-
10 tion, and Liability Act of 1980 (42 U.S.C.
11 9622(e)(1)) is amended by inserting after subpara-
12 graph (C) the following:

13 “(D) For each potentially responsible
14 party, the evidence that indicates that each ele-
15 ment of liability contained in section 107(a)(1)
16 (A), (B), (C), and (D), as applicable, is
17 present.”.

18 **SEC. 506. CONTRIBUTION PROTECTION.**

19 Section 113(f)(2) of the Comprehensive Environ-
20 mental Response, Compensation, and Liability Act of
21 1980 (42 U.S.C. 9613(f)(2)) is amended in the first sen-
22 tence by inserting “or cost recovery” after “contribution”.

1 **SEC. 507. TREATMENT OF RELIGIOUS, CHARITABLE, SCI-**
2 **ENTIFIC, AND EDUCATIONAL ORGANIZA-**
3 **TIONS AS OWNERS OR OPERATORS.**

4 (a) DEFINITION.—Section 101(20) of the Com-
5 prehensive Environmental Response, Compensation, and
6 Liability Act of 1980 (42 U.S.C. 9601(20)) (as amended
7 by section 502(a)) is amended by adding at the end the
8 following:

9 “(I) RELIGIOUS, CHARITABLE, SCIENTIFIC,
10 AND EDUCATIONAL ORGANIZATIONS.—The term
11 ‘owner or operator’ includes an organization de-
12 scribed in section 501(c)(3) of the Internal Rev-
13 enue Code of 1986 that is organized and oper-
14 ated exclusively for religious, charitable, sci-
15 entific, or educational purposes and that holds
16 legal or equitable title to a vessel or facility.”.

17 (b) LIMITATION ON LIABILITY.—Section 107 of the
18 Comprehensive Environmental Response, Compensation,
19 and Liability Act of 1980 (42 U.S.C. 9607) (as amended
20 by section 501(b)) is amended by adding at the end the
21 following:

22 “(u) RELIGIOUS, CHARITABLE, SCIENTIFIC, AND
23 EDUCATIONAL ORGANIZATIONS.—

1 “(1) LIMITATION ON LIABILITY.—Subject to
2 paragraph (2), if an organization described in sec-
3 tion 101(20)(I) holds legal or equitable title to a ves-
4 sel or facility as a result of a charitable gift that is
5 allowable as a deduction under section 170, 2055, or
6 2522 of the Internal Revenue Code of 1986 (deter-
7 mined without regard to dollar limitations), the li-
8 ability of the organization shall be limited to the
9 lesser of the fair market value of the vessel or facil-
10 ity or the actual proceeds of the sale of the vessel
11 or facility received by the organization.

12 “(2) CONDITIONS.—In order for an organiza-
13 tion described in section 101(20)(I) to be eligible for
14 the limited liability described in paragraph (1), the
15 organization shall—

16 “(A) provide full cooperation, assistance,
17 and vessel or facility access to persons author-
18 ized to conduct response actions at the vessel or
19 facility, including the cooperation and access
20 necessary for the installation, preservation of
21 integrity, operation, and maintenance of any
22 complete or partial response action at the vessel
23 or facility;

1 “(B) provide full cooperation and assist-
2 ance to the United States in identifying and lo-
3 cating persons who recently owned, operated, or
4 otherwise controlled activities at the vessel or
5 facility;

6 “(C) establish by a preponderance of the
7 evidence that all active disposal of hazardous
8 substances at the vessel or facility occurred be-
9 fore the organization acquired the vessel or fa-
10 cility; and

11 “(D) establish by a preponderance of the
12 evidence that the organization did not cause or
13 contribute to a release or threatened release of
14 hazardous substances at the vessel or facility.

15 “(3) LIMITATION.—Nothing in this subsection
16 affects the liability of a person other than a person
17 described in section 101(20)(I) that meets the condi-
18 tions specified in paragraph (2).”.

19 **SEC. 508. COMMON CARRIERS.**

20 Section 107(b)(3) of the Comprehensive Environ-
21 mental Response, Compensation, and Liability Act of
22 1980 (42 U.S.C. 9607(b)(3)) is amended by striking “a
23 published tariff and acceptance” and inserting “a con-
24 tract”.

1 **SEC. 509. LIMITATION ON LIABILITY OF RAILROAD OWN-**
2 **ERS.**

3 Section 107 of the Comprehensive Environmental Re-
4 sponse, Compensation, and Liability Act of 1980 (42
5 U.S.C. 9607) (as amended by section 507(b)) is amended
6 by adding at the end the following:

7 “(v) LIMITATION ON LIABILITY OF RAILROAD OWN-
8 ERS.—Notwithstanding subsection (a)(1), a person that
9 does not impede the performance of a response action or
10 natural resource restoration shall not be liable under this
11 Act to the extent that liability is based solely on the status
12 of the person as a railroad owner or operator of a spur
13 track, including a spur track over land subject to an ease-
14 ment, to a facility that is owned or operated by a person
15 that is not affiliated with the railroad owner or operator,
16 if—

17 “(1) the spur track provides access to a main
18 line or branch line track that is owned or operated
19 by the railroad;

20 “(2) the spur track is 10 miles long or less; and

21 “(3) the railroad owner or operator does not
22 cause or contribute to a release or threatened release
23 at the spur track.”.

1 **SEC. 510. LIABILITY OF RECYCLERS.**

2 (a) DEFINITIONS.—Section 101 of the Comprehen-
 3 sive Environmental Response, Compensation, and Liabil-
 4 ity Act of 1980 (42 U.S.C. 9601) (as amended by section
 5 501(a)) is amended by adding at the end the following:

6 “(47) RECYCLABLE MATERIAL.—The term ‘re-
 7 cyclable material’—

8 “(A) means—

9 “(i) scrap glass, paper, plastic, rub-
 10 ber, or textile;

11 “(ii) scrap metal; and

12 “(iii) a spent battery; and

13 “(B) includes small amounts of any type of
 14 material that is incident to or adherent to ma-
 15 terial described in subparagraph (A) as a result
 16 of the normal and customary use of the mate-
 17 rial prior to the exhaustion of the useful life of
 18 the material.

19 “(48) SCRAP METAL.—The term ‘scrap
 20 metal’—

21 “(A) means—

22 “(i) scrap metal (as that term is de-
 23 fined by the Administrator for purposes of
 24 the Solid Waste Disposal Act (42 U.S.C.
 25 6901 et seq.) in section 261.1(c)(6) of title

1 40, Code of Federal Regulations, or any
2 successor regulation); and

3 “(ii) a metal byproduct (such as slag,
4 skimming, or dross) that is not 1 of the
5 primary products of, and is not solely or
6 separately produced by, a production proc-
7 ess; but

8 “(B) does not include—

9 “(i) any steel shipping container
10 that—

11 “(I) has (or, when intact, had) a
12 capacity of not less than 30 and not
13 more than 3,000 liters; and

14 “(II) has any hazardous sub-
15 stance contained in or adherent to it
16 (not including any small pieces of
17 metal that may remain after a haz-
18 ardous substance has been removed
19 from the container or any alloy or
20 other material that may be chemically
21 or metallurgically bonded in the steel
22 itself); or

23 “(ii) any material described in sub-
24 paragraph (A) that the Administrator may
25 by regulation exclude from the meaning of

1 the term based on a finding that inclusion
2 of the material within the meaning of the
3 term would result in a threat to human
4 health or the environment.”.

5 (b) LIABILITY OF RECYCLERS.—Section 107 of the
6 Comprehensive Environmental Response, Compensation,
7 and Liability Act of 1980 (42 U.S.C. 9607) (as amended
8 by section 509) is amended by adding at the end the fol-
9 lowing:

10 “(w) LIABILITY OF RECYCLERS.—

11 “(1) APPLICABILITY OF SUBSECTION.—Subject
12 to paragraph (10), this subsection shall be applied to
13 determine the liability of any person with respect to
14 a transaction engaged in before, on, or after the
15 date of enactment of this subsection.

16 “(2) RELIEF FROM LIABILITY.—Except as pro-
17 vided in paragraph (6), a person that arranges for
18 the recycling of recyclable material shall not be liable
19 under subsection (a)(1) (C) or (D).

20 “(3) SCRAP GLASS, PAPER, PLASTIC, RUBBER,
21 OR TEXTILE.—For the purposes of paragraph (2), a
22 person shall be considered to arrange for the recy-
23 cling of scrap glass, paper, plastic, rubber, or textile

1 if the person sells or otherwise arranges for the recy-
2 cling of the recyclable material in a transaction in
3 which, at the time of the transaction—

4 “(A) the recyclable material meets a com-
5 mercial specification;

6 “(B) a market exists for the recyclable ma-
7 terial;

8 “(C) a substantial portion of the recyclable
9 material is made available for use as a feed-
10 stock for the manufacture of a new saleable
11 product; and

12 “(D)(i) the recyclable material is a replace-
13 ment or substitute for a virgin raw material; or

14 “(ii) the product to be made from the recy-
15 clable material is a replacement or substitute
16 for a product made, in whole or in part, from
17 a virgin raw material.

18 “(4) SCRAP METAL.—For the purposes of para-
19 graph (2), a person shall be considered to arrange
20 for the recycling of scrap metal if the person sells
21 or otherwise arranges for the recycling of the scrap
22 metal in a transaction in which, at the time of the
23 transaction—

1 “(A) the conditions stated in subpara-
2 graphs (A) through (D) of paragraph (3) are
3 met; and

4 “(B) in the case of a transaction that oc-
5 curs after the effective date of a standard, es-
6 tablished by the Administrator by regulation
7 under the Solid Waste Disposal Act (42 U.S.C.
8 6901 et seq.), regarding the storage, transport,
9 management, or other activity associated with
10 the recycling of scrap metal, the person is in
11 compliance with the standard.

12 “(5) SPENT BATTERIES.—

13 “(A) IN GENERAL.—For the purposes of
14 paragraph (1), a person shall be considered to
15 arrange for the recycling of a spent lead-acid
16 battery, nickel-cadmium battery, or other bat-
17 tery if the person sells or otherwise arranges for
18 the recycling of the battery in a transaction in
19 which, at the time of the transaction—

20 “(i) the conditions stated in subpara-
21 graphs (A) through (D) of paragraph (3)
22 are met;

23 “(ii) the person does not reclaim the
24 valuable components of the battery; and

1 “(iii) in the case of a transaction that
 2 occurs after the effective date of a stand-
 3 ard, established by the Administrator by
 4 regulation under authority of the Solid
 5 Waste Disposal Act (42 U.S.C. 6901 et
 6 seq.) or the Mercury-Containing and Re-
 7 chargeable Battery Management Act), re-
 8 garding the storage, transport, manage-
 9 ment, or other activity associated with the
 10 recycling of batteries, the person is in com-
 11 pliance with the standard.

12 “(B) TOLLING ARRANGEMENTS.—A person
 13 that, by contract, arranges for reclamation and
 14 smelting of a battery by a third party not a
 15 party to a transaction under subparagraph (A)
 16 and receives from the third party material re-
 17 claimed from the battery shall not, by reason of
 18 the receipt of the reclaimed material, be consid-
 19 ered to reclaim the valuable components of the
 20 battery for purposes of subparagraph (A)(ii).

21 “(6) GROUNDS FOR ESTABLISHING LIABIL-
 22 ITY.—

23 “(A) IN GENERAL.—A person that ar-
 24 ranges for the recycling of recyclable material
 25 that would be liable under subsection (a)(1) (C)

1 or (D) but for paragraph (2) shall be liable not-
2 withstanding that paragraph if—

3 “(i) the person has an objectively rea-
4 sonable basis to believe at the time of the
5 recycling transaction that—

6 “(I) the recyclable material will
7 not be recycled;

8 “(II) the recyclable material will
9 be burned as fuel, for energy recovery
10 or incineration;

11 “(III) the consuming facility is
12 not in compliance with a substantive
13 provision (including a requirement to
14 obtain a permit for handling, process-
15 ing, reclamation, or other manage-
16 ment activity associated with recycla-
17 ble material) of any Federal, State, or
18 local environmental law (including a
19 regulation), or a compliance order or
20 decree issued under such a law, appli-
21 cable to the handling, processing, rec-
22 lamation, or other management activ-
23 ity associated with the recyclable ma-
24 terial; or

1 “(IV) a hazardous substance has
2 been added to the recyclable material
3 for purposes other than processing for
4 recycling;

5 “(ii) the person fails to exercise rea-
6 sonable care with respect to the manage-
7 ment or handling of the recyclable material
8 (for which purpose a failure to adhere to
9 customary industry practices current at
10 the time of the recycling transaction de-
11 signed to minimize, through source control,
12 contamination of the recyclable material by
13 hazardous substances shall be considered
14 to be a failure to exercise reasonable care);
15 or

16 “(iii) any item of the recyclable mate-
17 rial contains—

18 “(I) polychlorinated biphenyls at
19 a concentration in excess of 50 parts
20 per million (or any different con-
21 centration specified in any applicable
22 standard that may be issued under
23 other Federal law after the date of en-
24 actment of this subsection); or

1 “(II) in the case of a transaction
2 involving scrap paper, any concentra-
3 tion of a hazardous substance that the
4 Administrator determines by regula-
5 tion, issued after the date of enact-
6 ment of this subsection and before the
7 date of the transaction, to be likely to
8 cause significant risk to human health
9 or the environment as a result of its
10 inclusion in the paper recycling proc-
11 ess.

12 “(B) OBJECTIVELY REASONABLE BASIS
13 FOR BELIEF.—Whether a person has an objec-
14 tively reasonable basis for belief described in
15 subparagraph (A)(i) shall be determined using
16 criteria that include—

17 “(i) the size of the person’s business;

18 “(ii) customary industry practices (in-
19 cluding practices designed to minimize,
20 through source control, contamination of
21 recyclable material by hazardous sub-
22 stances);

23 “(iii) the price paid or received in the
24 recycling transaction; and

1 “(iv) the ability of the person to de-
2 tect the nature of the consuming facility’s
3 operations concerning handling, processing,
4 or reclamation of the recyclable material or
5 other management activities associated
6 with the recyclable material.

7 “(7) REGULATIONS.—The Administrator may
8 issue a regulation that clarifies the meaning of any
9 term used in this subsection or by any other means
10 makes clear the application of this subsection to any
11 person.

12 “(8) LIABILITY FOR ATTORNEY’S FEES FOR
13 CERTAIN ACTIONS.—A person that, after the date of
14 enactment of this subsection, commences a civil ac-
15 tion in contribution against a person that is not lia-
16 ble by operation of this subsection shall be liable to
17 that person for all reasonable costs of defending the
18 action, including all reasonable attorney’s fees and
19 expert witness fees.

20 “(9) RELATIONSHIP TO LIABILITY UNDER
21 OTHER LAWS.—Nothing in this subsection shall af-
22 fect—

23 “(A) liability under any other Federal,
24 State, or local law (including a regulation); or

1 “(B) the authority of the Administrator to
2 issue regulations under the Solid Waste Dis-
3 posal Act (42 U.S.C. 6901 et seq.) or any other
4 law.

5 “(10) TRANSITION RULES.—

6 “(A) DECREE OR ORDER ENTERED PRIOR
7 TO JANUARY 1, 1997.—This subsection shall not
8 affect any judicial decree or order that was en-
9 tered or any administrative order that became
10 effective prior to January 1, 1997, unless, as of
11 the date of enactment of this subsection, the ju-
12 dicial decree or order remained subject to ap-
13 peal or the administrative order remained sub-
14 ject to judicial review.

15 “(B) DECREE OR ORDER ENTERED ON OR
16 AFTER JANUARY 1, 1997.—Any consent decree
17 with the United States, administrative order, or
18 judgment in favor of the United States that
19 was entered, or in the case of an administrative
20 order, became effective, on or after January 1,
21 1997, and before the date of enactment of this
22 subsection shall be reopened at the request of
23 any party to the recycling transaction for a de-
24 termination of the party’s liability to the United
25 States based on this subsection.

1 “(C) EFFECT ON NONRECYCLERS.—

2 “(i) COSTS BORNE BY THE UNITED
3 STATES.—All costs attributable to a recy-
4 cling transaction that, absent this sub-
5 section, would be borne by a person that is
6 relieved of liability (in whole or in part) by
7 this subsection shall be borne by the Unit-
8 ed States, to the extent that the person is
9 relieved of liability.

10 “(ii) NO RECOVERY FROM THE UNIT-
11 ED STATES.—Notwithstanding clause (i),
12 no person shall be entitled to recover any
13 sums paid to the United States prior to
14 the date of enactment of this subsection in
15 satisfaction of any liability attributable to
16 a recycling transaction.

17 “(D) CONTRIBUTION AMONG PARTIES TO
18 RECYCLING TRANSACTIONS.—Notwithstanding
19 the other provisions of this subsection, a person
20 that is relieved of liability by this subsection,
21 but incurred response costs for a response ac-
22 tion taken prior to the date of enactment of this
23 subsection, may bring a civil action for con-
24 tribution for the costs against—

1 “(i) any person that is liable under
2 section 107(a)(1) (A) or (B); or

3 “(ii) any person that, before the date
4 of enactment of this subsection—

5 “(I) received and failed to comply
6 with an administrative order issued
7 under section 104 or 106; or

8 “(II) received and did not accept
9 a written offer from the United States
10 to enter into a consent decree or ad-
11 ministrative order.”.

12 **TITLE VI—FEDERAL FACILITIES**

13 **SEC. 601. TRANSFER OF AUTHORITIES.**

14 Section 120 of the Comprehensive Environmental Re-
15 sponse, Compensation, and Liability Act of 1980 (42
16 U.S.C. 9620) is amended by striking subsection (g) and
17 inserting the following:

18 “(g) TRANSFER OF AUTHORITIES.—

19 “(1) DEFINITIONS.—In this section:

20 “(A) INTERAGENCY AGREEMENT.—The
21 term ‘interagency agreement’ means an inter-
22 agency agreement under this section.

23 “(B) TRANSFER AGREEMENT.—The term
24 ‘transfer agreement’ means a transfer agree-
25 ment under paragraph (3).

1 “(C) TRANSFEREE STATE.—The term
2 ‘transferee State’ means a State to which au-
3 thorities have been transferred under a transfer
4 agreement.

5 “(2) STATE APPLICATION FOR TRANSFER OF
6 AUTHORITIES.—A State may apply to the Adminis-
7 trator to exercise the authorities vested in the Ad-
8 ministrator under this Act at any facility located in
9 the State that is—

10 “(A) owned or operated by any depart-
11 ment, agency, or instrumentality of the United
12 States (including the executive, legislative, and
13 judicial branches of government); and

14 “(B) listed on the National Priorities List.

15 “(3) TRANSFER OF AUTHORITIES.—

16 “(A) DETERMINATIONS.—The Adminis-
17 trator shall enter into a transfer agreement to
18 transfer to a State the authorities described in
19 paragraph (2) if the Administrator determines
20 that—

21 “(i) the State has the ability to exer-
22 cise such authorities in accordance with
23 this Act, including adequate legal author-
24 ity, financial and personnel resources, or-
25 ganization, and expertise;

1 “(ii) the State has demonstrated expe-
 2 rience in exercising similar authorities;

3 “(iii) the State has agreed to be
 4 bound by all Federal requirements and
 5 standards under section 133 governing the
 6 design and implementation of the facility
 7 evaluation, remedial action plan, and reme-
 8 dial design; and

9 “(iv) the State has agreed to abide by
 10 the terms of any interagency agreement or
 11 agreements covering the Federal facility or
 12 facilities with respect to which authorities
 13 are being transferred in effect at the time
 14 of the transfer of authorities.

15 “(B) CONTENTS OF TRANSFER AGREE-
 16 MENT.—A transfer agreement—

17 “(i) shall incorporate the determina-
 18 tions of the Administrator under subpara-
 19 graph (A); and

20 “(ii) in the case of a transfer agree-
 21 ment covering a facility with respect to
 22 which there is no interagency agreement
 23 that specifies a dispute resolution process,
 24 shall require that within 120 days after the
 25 effective date of the transfer agreement,

1 the State shall agree with the head of the
 2 Federal department, agency, or instrumen-
 3 tality that owns or operates the facility on
 4 a process for resolution of any disputes be-
 5 tween the State and the Federal depart-
 6 ment, agency, or instrumentality regarding
 7 the selection of a remedial action for the
 8 facility; and

9 “(iii) shall not impose on the trans-
 10 feree State any term or condition other
 11 than that the State meet the requirements
 12 of subparagraph (A).

13 “(4) EFFECT OF TRANSFER.—

14 “(A) STATE AUTHORITIES.—A transferee
 15 State—

16 “(i) shall not be deemed to be an
 17 agent of the Administrator but shall exer-
 18 cise the authorities transferred under a
 19 transfer agreement in the name of the
 20 State; and

21 “(ii) shall have exclusive authority to
 22 exercise authorities that have been trans-
 23 ferred.

1 “(B) EFFECT ON INTERAGENCY AGREE-
2 MENTS.—Nothing in this subsection shall re-
3 quire, authorize, or permit the modification or
4 revision of an interagency agreement covering a
5 facility with respect to which authorities have
6 been transferred to a State under a transfer
7 agreement (except for the substitution of the
8 transferee State for the Administrator in the
9 terms of the interagency agreement, including
10 terms stating obligations intended to preserve
11 the confidentiality of information) without the
12 written consent of the Governor of the State
13 and the head of the department, agency, or in-
14 strumentality.

15 “(5) SELECTED REMEDIAL ACTION.—The reme-
16 dial action selected for a facility under section 133
17 by a transferee State shall constitute the only reme-
18 dial action required to be conducted at the facility,
19 and the transferee State shall be precluded from en-
20 forcing any other remedial action requirement under
21 Federal or State law, except for—

22 “(A) any corrective action under the Solid
23 Waste Disposal Act (42 U.S.C. 6901 et seq.)
24 that was initiated prior to the date of enact-
25 ment of this subsection; and

1 “(B) any remedial action in excess of re-
2 medial action under section 133 that the State
3 selects in accordance with paragraph (10).

4 “(6) DEADLINE.—

5 “(A) IN GENERAL.—The Administrator
6 shall make a determination on an application by
7 a State under paragraph (2) not later than 120
8 days after the date on which the Administrator
9 receives the application.

10 “(B) FAILURE TO ACT.—If the Adminis-
11 trator does not issue a notice of approval or no-
12 tice of disapproval of an application within the
13 time period stated in subparagraph (A), the ap-
14 plication shall be deemed to have been granted.

15 “(7) RESUBMISSION OF APPLICATION.—

16 “(A) IN GENERAL.—If the Administrator
17 disapproves an application under paragraph (1),
18 the State may resubmit the application at any
19 time after receiving the notice of disapproval.

20 “(B) FAILURE TO ACT.—If the Adminis-
21 trator does not issue a notice of approval or no-
22 tice of disapproval of a resubmitted application
23 within the time period stated in paragraph
24 (6)(A), the resubmitted application shall be
25 deemed to have been granted.

1 “(8) JUDICIAL REVIEW.—The State (but no
2 other person) shall be entitled to judicial review
3 under section 113(b) of a disapproval of a resubmit-
4 ted application.

5 “(9) WITHDRAWAL OF AUTHORITIES.—The Ad-
6 ministrator may withdraw the authorities trans-
7 ferred under a transfer agreement in whole or in
8 part if the Administrator determines that the
9 State—

10 “(A) is exercising the authorities, in whole
11 or in part, in a manner that is inconsistent with
12 the requirements of this Act;

13 “(B) has violated the transfer agreement,
14 in whole or in part; or

15 “(C) no longer meets one of the require-
16 ments of paragraph (3).

17 “(10) STATE COST RESPONSIBILITY.—The
18 State may require a remedial action that exceeds the
19 remedial action selection requirements of section 121
20 if the State pays the incremental cost of implement-
21 ing that remedial action over the most cost-effective
22 remedial action that would result from the applica-
23 tion of section 133.

24 “(11) DISPUTE RESOLUTION AND ENFORCE-
25 MENT.—

1 “(A) DISPUTE RESOLUTION.—

2 “(i) FACILITIES COVERED BY BOTH A
3 TRANSFER AGREEMENT AND AN INTER-
4 AGENCY AGREEMENTS.—In the case of a
5 facility with respect to which there is both
6 a transfer agreement and an interagency
7 agreement, if the State does not concur in
8 the remedial action proposed for selection
9 by the Federal department, agency, or in-
10 strumentality, the Federal department,
11 agency, or instrumentality and the State
12 shall engage in the dispute resolution proc-
13 ess provided for in the interagency agree-
14 ment, except that the final level for resolu-
15 tion of the dispute shall be the head of the
16 Federal department, agency, or instrumen-
17 tality and the Governor of the State.

18 “(ii) FACILITIES COVERED BY A
19 TRANSFER AGREEMENT BUT NOT AN
20 INTERAGENCY AGREEMENT.—In the case
21 of a facility with respect to which there is
22 a transfer agreement but no interagency
23 agreement, if the State does not concur in
24 the remedial action proposed for selection

1 by the Federal department, agency, or in-
2 strumentality, the Federal department,
3 agency, or instrumentality and the State
4 shall engage in dispute resolution as pro-
5 vided in paragraph (3)(B)(ii) under which
6 the final level for resolution of the dispute
7 shall be the head of the Federal depart-
8 ment, agency, or instrumentality and the
9 Governor of the State.

10 “(iii) FAILURE TO RESOLVE.—If no
11 agreement is reached between the head of
12 the Federal department, agency, or instru-
13 mentality and the Governor in a dispute
14 resolution process under clause (i) or
15 (ii), the Governor of the State shall make
16 the final determination regarding selection
17 of a remedial action. To compel implemen-
18 tation of the State’s selected remedy, the
19 State must bring a civil action in United
20 States district court.

21 “(B) ENFORCEMENT.—

22 “(i) AUTHORITY; JURISDICTION.—An
23 interagency agreement with respect to
24 which there is a transfer agreement or an
25 order issued by a transferee State shall be

1 enforceable by a transferee State or by the
2 Federal department, agency, or instrumen-
3 tality that is a party to the interagency
4 agreement only in the United States dis-
5 trict court for the district in which the fa-
6 cility is located.

7 “(ii) REMEDIES.—The district court
8 shall—

9 “(I) enforce compliance with any
10 provision, standard, regulation, condi-
11 tion, requirement, order, or final de-
12 termination that has become effective
13 under the interagency agreement;

14 “(II) impose any appropriate civil
15 penalty provided for any violation of
16 an interagency agreement, not to ex-
17 ceed \$25,000 per day;

18 “(III) compel implementation of
19 the selected remedial action; and

20 “(IV) review a challenge by the
21 Federal department, agency, or in-
22 strumentality to the remedial action
23 selected by the State under this sec-
24 tion, in accordance with section
25 113(j).

1 “(12) COMMUNITY PARTICIPATION.—If, prior to
 2 the date of enactment of this section, a Federal de-
 3 partment, agency, or instrumentality had established
 4 for a facility covered by a transfer agreement a facil-
 5 ity-specific advisory board or other community-based
 6 advisory group (designated as a ‘site-specific advi-
 7 sory board’, a ‘restoration advisory board’, or other-
 8 wise), and the Administrator determines that the
 9 board or group is willing and able to perform the re-
 10 sponsibilities of a community response organization
 11 under section 117(e)(2), the board or group—

12 “(A) shall be considered to be a commu-
 13 nity response organization for the purposes of
 14 section 117 (e) (2), (3), (4), and (9), and (g)
 15 and sections 131 and 133; but

16 “(B) shall not be required to comply with,
 17 and shall not be considered to be a community
 18 response organization for the purposes of, sec-
 19 tion 117 (e) (1), (5), (6), (7), or (8) or (f).”.

20 **SEC. 602. LIMITATION ON CRIMINAL LIABILITY OF FED-**
 21 **ERAL OFFICERS, EMPLOYEES, AND AGENTS.**

22 Section 120 of the Comprehensive Environmental Re-
 23 sponse, Compensation, and Liability Act of 1980 (42
 24 U.S.C. 9620) is amended by adding at the end the follow-
 25 ing:

1 “(k) CRIMINAL LIABILITY.—Notwithstanding any
 2 other provision of this Act or any other law, an officer,
 3 employee, or agent of the United States shall not be held
 4 criminally liable for a failure to comply, in any fiscal year,
 5 with a requirement to take a response action at a facility
 6 that is owned or operated by a department, agency, or in-
 7 strumentality of the United States, under this Act, the
 8 Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), or any
 9 other Federal or State law unless—

10 “(1) the officer, employee, or agent has not
 11 fully performed any direct responsibility or delegated
 12 responsibility that the officer, employee, or agent
 13 had under Executive Order 12088 (42 U.S.C. 4321
 14 note) or any other delegation of authority to ensure
 15 that a request for funds sufficient to take the re-
 16 sponse action was included in the President’s budget
 17 request under section 1105 of title 31, United States
 18 Code, for that fiscal year; or

19 “(2) appropriated funds were available to pay
 20 for the response action.”.

21 **SEC. 603. INNOVATIVE TECHNOLOGIES FOR REMEDIAL AC-**
 22 **TION AT FEDERAL FACILITIES.**

23 (a) IN GENERAL.—Section 311 of the Comprehensive
 24 Environmental Response, Compensation, and Liability Act

1 of 1980 (42 U.S.C. 9660) is amended by adding at the
2 end the following:

3 “(h) FEDERAL FACILITIES.—

4 “(1) DESIGNATION.—The President may des-
5 ignate a facility that is owned or operated by any de-
6 partment, agency, or instrumentality of the United
7 States, and that is listed or proposed for listing on
8 the National Priorities List, to facilitate the re-
9 search, development, and application of innovative
10 technologies for remedial action at the facility.

11 “(2) USE OF FACILITIES.—

12 “(A) IN GENERAL.—A facility designated
13 under paragraph (1) shall be made available to
14 Federal departments and agencies, State de-
15 partments and agencies, and public and private
16 instrumentalities, to carry out activities de-
17 scribed in paragraph (1).

18 “(B) COORDINATION.—The Adminis-
19 trator—

20 “(i) shall coordinate the use of the fa-
21 cilities with the departments, agencies, and
22 instrumentalities of the United States; and

23 “(ii) may approve or deny the use of
24 a particular innovative technology for re-
25 medial action at any such facility.

1 “(3) CONSIDERATIONS.—

2 “(A) EVALUATION OF SCHEDULES AND
3 PENALTIES.—In considering whether to permit
4 the application of a particular innovative tech-
5 nology for remedial action at a facility des-
6 ignated under paragraph (1), the Administrator
7 shall evaluate the schedules and penalties appli-
8 cable to the facility under any agreement or
9 order entered into under section 120.

10 “(B) AMENDMENT OF AGREEMENT OR
11 ORDER.—If, after an evaluation under subpara-
12 graph (A), the Administrator determines that
13 there is a need to amend any agreement or
14 order entered into pursuant to section 120, the
15 Administrator shall comply with all provisions
16 of the agreement or order, respectively, relating
17 to the amendment of the agreement or order.”.

18 (b) REPORT TO CONGRESS.—Section 311(e) of Com-
19 prehensive Environmental Response, Compensation, and
20 Liability Act of 1980 (42 U.S.C. 9660(e)) is amended—

21 (1) by striking “At the time” and inserting the
22 following:

23 “(1) IN GENERAL.—At the time”; and

24 (2) by adding at the end the following:

1 “(2) ADDITIONAL INFORMATION.—A report
 2 under paragraph (1) shall include information on the
 3 use of facilities described in subsection (h)(1) for the
 4 research, development, and application of innovative
 5 technologies for remedial activity, as authorized
 6 under subsection (h).”.

7 **TITLE VII—NATURAL RESOURCE** 8 **DAMAGES**

9 **SEC. 701. RESTORATION OF NATURAL RESOURCES.**

10 Section 107(f) of the Comprehensive Environmental
 11 Response, Compensation, and Liability Act of 1980 (42
 12 U.S.C. 9607(f)) is amended—

13 (1) by inserting “NATURAL RESOURCE DAM-
 14 AGES.—” after “(f)”;

15 (2) by striking “(1) NATURAL RESOURCES LI-
 16 ABILITY.—In the case” and inserting the following:

17 “(1) LIABILITY.—

18 “(A) IN GENERAL.—In the case”; and

19 (3) in paragraph (1)(A), as designated by para-
 20 graph (2)—

21 (A) by inserting after the fourth sentence
 22 the following: “Sums recovered by an Indian
 23 tribe as trustee under this subsection shall be
 24 available for use only for restoration, replace-
 25 ment, or acquisition of the equivalent of such

1 natural resources by the Indian tribe. A res-
2 toration, replacement, or acquisition conducted
3 by the United States, a State, or an Indian
4 tribe shall proceed only if it is technologically
5 feasible from an engineering perspective at a
6 reasonable cost and consistent with all known
7 or anticipated response actions at or near the
8 facility.”; and

9 (B) by striking “The measure of damages
10 in any action” and all that follows through the
11 end of the paragraph and inserting the follow-
12 ing:

13 “(B) LIMITATIONS ON LIABILITY.—

14 “(i) MEASURE OF DAMAGES.—The
15 measure of damages in any action for dam-
16 ages for injury to, destruction of, or loss of
17 natural resources shall be limited to—

18 “(I) the reasonable costs of res-
19 toration, replacement, or acquisition
20 of the equivalent of natural resources
21 that suffer injury, destruction, or loss
22 caused by a release; and

23 “(II) the reasonable costs of as-
24 sessing damages.

1 “(ii) NONUSE VALUES.—There shall
2 be no recovery under this Act for any im-
3 pairment of nonuse values.

4 “(iii) NO DOUBLE RECOVERY.—A per-
5 son that obtains a recovery of damages, re-
6 sponse costs, assessment costs, or any
7 other costs under this Act for the costs of
8 restoring an injury to or destruction or
9 loss of a natural resource (including injury
10 assessment costs) shall not be entitled to
11 recovery under this Act or any other Fed-
12 eral or State law for the same injury to or
13 destruction or loss of the natural resource.

14 “(iv) RESTRICTIONS ON RECOVERY.—

15 “(I) LIMITATION ON LOST USE
16 DAMAGES.—There shall be no recov-
17 ery from any person under this sec-
18 tion for the costs of a loss of use of
19 a natural resource for a natural re-
20 source injury, destruction, or loss that
21 occurred before December 11, 1980.

22 “(II) RESTORATION, REPLACE-
23 MENT, OR ACQUISITION.—There shall
24 be no recovery from any person under

1 this section for the costs of restora-
 2 tion, replacement, or acquisition of
 3 the equivalent of a natural resource if
 4 the natural resource injury, destruc-
 5 tion, or loss for which the restoration,
 6 replacement, or acquisition is sought
 7 and the release of the hazardous sub-
 8 stance from which the injury resulted
 9 occurred wholly before December 11,
 10 1980.”.

11 **SEC. 702. ASSESSMENT OF INJURY TO AND RESTORATION**
 12 **OF NATURAL RESOURCES.**

13 (a) NATURAL RESOURCE INJURY AND RESTORATION
 14 ASSESSMENTS.—Section 107(f)(2) of the Comprehensive
 15 Environmental Response, Compensation, and Liability Act
 16 of 1980 (42 U.S.C. 9607(f)(2)) is amended by striking
 17 subparagraph (C) and inserting the following:

18 “(C) NATURAL RESOURCE INJURY AND
 19 RESTORATION ASSESSMENT.—

20 “(i) REGULATION.—A natural re-
 21 source injury and restoration assessment
 22 conducted for the purposes of this Act
 23 made by a Federal, State, or tribal trustee
 24 shall be performed, to the extent prac-
 25 ticable, in accordance with—

1 “(I) the regulation issued under
2 section 301(c); and

3 “(II) generally accepted scientific
4 and technical standards and meth-
5 odologies to ensure the validity and
6 reliability of assessment results.

7 “(ii) FACILITY-SPECIFIC CONDI-
8 TIONS.—Injury assessment, restoration
9 planning, and quantification of restoration
10 costs shall, to the extent practicable, be
11 based on facility-specific information.

12 “(iii) RECOVERABLE COSTS.—A trust-
13 ee’s claim for assessment costs—

14 “(I) may include only—

15 “(aa) costs that arise from
16 work performed for the purpose
17 of assessing injury to a natural
18 resource to support a claim for
19 restoration of the natural re-
20 source; and

21 “(bb) costs that arise from
22 developing and evaluating a rea-
23 sonable range of alternative res-
24 toration measures; but

1 “(II) may not include the costs of
 2 conducting any type of study relying
 3 on the use of contingent valuation
 4 methodology.

5 “(iv) PAYMENT PERIOD.—In a case in
 6 which injury to or destruction or loss of a
 7 natural resource was caused by a release
 8 that occurred over a period of years, pay-
 9 ment of damages shall be permitted to be
 10 made over a period of years that is appro-
 11 priate in view of the period of time over
 12 which the damages occurred, the amount
 13 of the damages, the financial ability of the
 14 responsible party to pay the damages, and
 15 the time period over which and the pace at
 16 which expenditures are expected to be
 17 made for restoration, replacement, and ac-
 18 quisition activities.

19 “(v) TRUSTEE RESTORATION
 20 PLANS.—

21 “(I) ADMINISTRATIVE RECORD.—
 22 Participating natural resource trust-
 23 ees may designate a lead administra-
 24 tive trustee or trustees. The lead ad-
 25 ministrative trustee may establish an

1 administrative record on which the
2 trustees will base the selection of a
3 plan for restoration of a natural re-
4 source. The restoration plan shall in-
5 clude a determination of the nature
6 and extent of the natural resource in-
7 jury. The administrative record shall
8 be made available to the public at or
9 near the facility at which the release
10 occurred.

11 “(II) PUBLIC PARTICIPATION.—
12 The Administrator shall issue a regu-
13 lation for the participation of inter-
14 ested persons, including potentially re-
15 sponsible parties, in the development
16 of the administrative record on which
17 the trustees will base selection of a
18 restoration plan and on which judicial
19 review of restoration plans will be
20 based. The procedures for participa-
21 tion shall include, at a minimum, each
22 of the requirements stated in section
23 113(k)(2)(B).”.

1 (b) REGULATIONS.—Section 301 of the Comprehen-
2 sive Environmental Response, Compensation, and Liabil-
3 ity Act of 1980 (42 U.S.C. 9651) is amended by striking
4 subsection (c) and inserting the following:

5 “(c) REGULATIONS FOR INJURY AND RESTORATION
6 ASSESSMENTS.—

7 “(1) IN GENERAL.—The President, acting
8 through Federal officials designated by the National
9 Contingency Plan under section 107(f)(2), shall
10 issue a regulation for the assessment of injury to
11 natural resources and the costs of restoration of nat-
12 ural resources (including the costs of assessment)
13 for the purposes of this Act and for determination
14 of the time periods in which payment of damages
15 will be required.

16 “(2) CONTENTS.—The regulation under para-
17 graph (1) shall—

18 “(A) specify protocols for conducting as-
19 sessments in individual cases to determine the
20 injury, destruction, or loss of natural resources;

21 “(B) identify the best available procedures
22 to determine the reasonable costs of restoration
23 and assessment;

24 “(C) take into consideration the ability of
25 a natural resource to recover naturally and the

1 availability of replacement or alternative re-
2 sources;

3 “(D) provide for the designation of a single
4 lead Federal decisionmaking trustee for each
5 facility at which an injury to natural resources
6 has occurred within 180 days after the date of
7 first notice to the responsible parties that an
8 assessment of injury and restoration alter-
9 natives will be made; and

10 “(E) set forth procedures under which—

11 “(i) all pending and potential trustees
12 identify the injured natural resources with-
13 in their respective trust responsibilities,
14 and the authority under which such re-
15 sponsibilities are established, as soon as
16 practicable after the date on which a re-
17 lease occurs;

18 “(ii) assessment of injury and restora-
19 tion alternatives will be coordinated to the
20 greatest extent practicable between the
21 lead Federal decisionmaking trustee and
22 any present or potential State or tribal
23 trustees, as applicable; and

1 “(iii) time periods for payment of
2 damages in accordance with section
3 107(f)(2)(C)(iv) shall be determined.

4 “(3) DEADLINE FOR ISSUANCE OF REGULA-
5 TION; PERIODIC REVIEW.—The regulation under
6 paragraph (1) shall be issued not later than 1 year
7 after the date of enactment of the Superfund Clean-
8 up Acceleration Act of 1997 and shall be reviewed
9 and revised as appropriate every 5 years.”.

10 **SEC. 703. CONSISTENCY BETWEEN RESPONSE ACTIONS**
11 **AND RESOURCE RESTORATION STANDARDS.**

12 (a) RESTORATION STANDARDS AND ALTER-
13 NATIVES.—Section 107(f) of the Comprehensive Environ-
14 mental Response, Compensation, and Liability Act of
15 1980 (42 U.S.C. 9607(f)) is amended by adding at the
16 end the following:

17 “(3) COMPATIBILITY WITH REMEDIAL AC-
18 TION.—Both response actions and restoration meas-
19 ures may be implemented at the same facility, or to
20 address releases from the same facility. Such re-
21 sponse actions and restoration measures shall not be
22 inconsistent with one another and shall be imple-
23 mented, to the extent practicable, in a coordinated
24 and integrated manner.”.

1 (b) CONSIDERATION OF NATURAL RESOURCES IN
 2 RESPONSE ACTIONS.—Section 121(a) of the Comprehen-
 3 sive Environmental Response, Compensation, and Liabil-
 4 ity Act of 1980 (42 U.S.C. 9621(a)) (as amended by sec-
 5 tion 402(1)) is amended by adding at the end the follow-
 6 ing:

7 “(6) COORDINATION.—In evaluating and select-
 8 ing remedial actions, the Administrator shall take
 9 into account the potential for injury to a natural re-
 10 source resulting from such actions.”.

11 **SEC. 704. CONTRIBUTION.**

12 Subparagraph (A) of section 113(f)(1) of the Com-
 13 prehensive Environmental Response, Compensation, and
 14 Liability Act of 1980 (42 U.S.C. 9613(f)(1)) is amended
 15 in the third sentence by inserting “and natural resource
 16 damages” after “costs”.

17 **TITLE VIII—MISCELLANEOUS**

18 **SEC. 801. RESULT-ORIENTED CLEANUPS.**

19 (a) AMENDMENT.—Section 105(a) of the Com-
 20 prehensive Environmental Response, Compensation, and
 21 Liability Act of 1980 (42 U.S.C. 9605(a)) is amended—

22 (1) by striking “and” at the end of paragraph
 23 (9);

24 (2) by striking the period at the end of para-
 25 graph (10) and inserting “; and”; and

1 (3) by inserting after paragraph (10) the fol-
2 lowing:

3 “(11) procedures for conducting response ac-
4 tions, including facility evaluations, remedial inves-
5 tigations, feasibility studies, remedial action plans,
6 remedial designs, and remedial actions, which proce-
7 dures shall—

8 “(A) use a results-oriented approach to
9 minimize the time required to conduct response
10 measures and reduce the potential for exposure
11 to the hazardous substances, pollutants, and
12 contaminants in an efficient, timely, and cost-
13 effective manner;

14 “(B) require, at a minimum, expedited fa-
15 cility evaluations and risk assessments, timely
16 negotiation of response action goals, a single
17 engineering study, streamlined oversight of re-
18 sponse actions, and consultation with interested
19 parties throughout the response action process;

20 “(C) be subject to the requirements of sec-
21 tions 117, 120, 121, and 133 in the same man-
22 ner and to the same degree as those sections
23 apply to response actions; and

24 “(D) be required to be used for each reme-
25 dial action conducted under this Act unless the

1 Administrator determines that their use would
 2 not be cost-effective or result in the selection of
 3 a response action that achieves the goals of pro-
 4 tecting human health and the environment stat-
 5 ed in section 121(a)(1)(B).”.

6 (b) AMENDMENT OF NATIONAL HAZARDOUS SUB-
 7 STANCE RESPONSE PLAN.—Not later than 180 days after
 8 the date of enactment of this Act, the Administrator, after
 9 notice and opportunity for public comment, shall amend
 10 the National Hazardous Substance Response Plan under
 11 section 105(a) of the Comprehensive Environmental Re-
 12 sponse, Compensation, and Liability Act of 1980 (42
 13 U.S.C. 9605(a)) to include the procedures required by the
 14 amendment made by subsection (a).

15 **SEC. 802. NATIONAL PRIORITIES LIST.**

16 Section 105 of the Comprehensive Environmental Re-
 17 sponse, Compensation, and Liability Act of 1980 (42
 18 U.S.C. 9605) (as amended by section 407(a)(2)) is
 19 amended by adding at the end the following:

20 “(i) NATIONAL PRIORITIES LIST.—

21 “(1) LIMITATION.—

22 “(A) IN GENERAL.—After the date of the
 23 enactment of this subsection, the President may

1 add vessels and facilities to the National Prior-
2 ities List only in accordance with the following
3 schedule:

4 “(i) Not more than 30 vessels and fa-
5 cilities in 1997.

6 “(ii) Not more than 25 vessels and fa-
7 cilities in 1998.

8 “(iii) Not more than 20 vessels and
9 facilities in 1999.

10 “(iv) Not more than 15 vessels and
11 facilities in 2000.

12 “(v) Not more than 10 vessels and fa-
13 cilities in any year after 2000.

14 “(B) RELISTING.—The relisting of a vessel
15 or facility under section 130(d)(5)(C)(ii) shall
16 not be considered to be an addition to the Na-
17 tional Priorities List for purposes of this sub-
18 section.

19 “(2) PRIORITIZATION.—The Administrator
20 shall prioritize the vessels and facilities added under
21 paragraph (1) on a national basis in accordance with
22 the threat to human health and the environment
23 presented by each of the vessels and facilities, re-
24 spectively.

1 “(3) STATE CONCURRENCE.—A vessel or facil-
 2 ity may be added to the National Priorities List
 3 under paragraph (1) only with the concurrence of
 4 the Governor of the State in which the vessel or fa-
 5 cility is located.”.

6 **SEC. 803. OBLIGATIONS FROM THE FUND FOR RESPONSE**
 7 **ACTIONS.**

8 Section 104(c)(1) of the Comprehensive Environ-
 9 mental Response, Compensation, and Liability Act of
 10 1980 (42 U.S.C. 9604(c)(1)) is amended—

11 (1) in subparagraph (C) by striking “consistent
 12 with the remedial action to be taken” and inserting
 13 “not inconsistent with any remedial action that has
 14 been selected or is anticipated at the time of any re-
 15 moval action at a facility.”;

16 (2) by striking “\$2,000,000” and inserting
 17 “\$4,000,000”; and

18 (3) by striking “12 months” and inserting “2
 19 years”.

20 **TITLE IX—FUNDING**
 21 **Subtitle A—General Provisions**

22 **SEC. 901. AUTHORIZATION OF APPROPRIATIONS FROM THE**
 23 **FUND.**

24 Section 111(a) of the Comprehensive Environmental
 25 Response, Compensation, and Liability Act of 1980 (42

1 U.S.C. 9611(a)) is amended in the first sentence by strik-
 2 ing “not more than \$8,500,000,000 for the 5-year period
 3 beginning on the date of enactment of the Superfund
 4 Amendments and Reauthorization Act of 1986, and not
 5 more than \$5,100,000,000 for the period commencing Oc-
 6 tober 1, 1991, and ending September 30, 1994” and in-
 7 serting “a total of \$8,500,000,000 for fiscal years 1998,
 8 1999, 2000, 2001, and 2002”.

9 **SEC. 902. ORPHAN SHARE FUNDING.**

10 Section 111(a) of the Comprehensive Environmental
 11 Response, Compensation, and Liability Act of 1980 (42
 12 U.S.C. 9611(a)), as amended by section 301(c), is amend-
 13 ed by inserting after paragraph (8) the following:

14 “(9) ORPHAN SHARE FUNDING.—Payment of
 15 orphan shares under section 136.”.

16 **SEC. 903. DEPARTMENT OF HEALTH AND HUMAN SERV-**
 17 **ICES.**

18 Section 111 of the Comprehensive Environmental Re-
 19 sponse, Compensation, and Liability Act of 1980 (42
 20 U.S.C. 9611) is amended by striking subsection (m) and
 21 inserting the following:

22 “(m) HEALTH AUTHORITIES.—There are authorized
 23 to be appropriated from the Fund to the Secretary of
 24 Health and Human Services to be used for the purposes
 25 of carrying out the activities described in subsection (c)(4)

1 and the activities described in section 104(i), \$50,000,000
 2 for each of fiscal years 1998, 1999, 2000, 2001, and 2002.
 3 Funds appropriated under this subsection for a fiscal year,
 4 but not obligated by the end of the fiscal year, shall be
 5 returned to the Fund.”.

6 **SEC. 904. LIMITATIONS ON RESEARCH, DEVELOPMENT,**
 7 **AND DEMONSTRATION PROGRAMS.**

8 Section 111 of the Comprehensive Environmental Re-
 9 sponse, Compensation, and Liability Act of 1980 (42
 10 U.S.C. 9611) is amended by striking subsection (n) and
 11 inserting the following:

12 “(n) LIMITATIONS ON RESEARCH, DEVELOPMENT,
 13 AND DEMONSTRATION PROGRAMS.—

14 “(1) ALTERNATIVE OR INNOVATIVE TECH-
 15 NOLOGIES RESEARCH, DEVELOPMENT, AND DEM-
 16 ONSTRATION PROGRAMS.—

17 “(A) LIMITATION.—For each of fiscal
 18 years 1998, 1999, 2000, 2001, and 2002, not
 19 more than \$30,000,000 of the amounts avail-
 20 able in the Fund may be used for the purposes
 21 of carrying out the applied research, develop-
 22 ment, and demonstration program for alter-
 23 native or innovative technologies and training
 24 program authorized under section 311(b) other
 25 than basic research.

1 “(B) CONTINUING AVAILABILITY.—Such
2 amounts shall remain available until expended.

3 “(2) HAZARDOUS SUBSTANCE RESEARCH, DEM-
4 ONSTRATION, AND TRAINING.—

5 “(A) LIMITATION.—From the amounts
6 available in the Fund, not more than the follow-
7 ing amounts may be used for the purposes of
8 section 311(a):

9 “(i) For fiscal year 1998,
10 \$37,000,000.

11 “(ii) For fiscal year 1999,
12 \$39,000,000.

13 “(iii) For fiscal year 2000,
14 \$41,000,000.

15 “(iv) For each of fiscal years 2001
16 and 2002, \$43,000,000.

17 “(B) FURTHER LIMITATION.—No more
18 than 15 percent of such amounts shall be used
19 for training under section 311(a) for any fiscal
20 year.

21 “(3) UNIVERSITY HAZARDOUS SUBSTANCE RE-
22 SEARCH CENTERS.—For each of fiscal years 1998,
23 1999, 2000, 2001, and 2002, not more than
24 \$5,000,000 of the amounts available in the Fund
25 may be used for the purposes of section 311(d).”.

1 **SEC. 905. AUTHORIZATION OF APPROPRIATIONS FROM**
 2 **GENERAL REVENUES.**

3 Section 111(p) of the Comprehensive Environmental
 4 Response, Compensation, and Liability Act of 1980 (42
 5 U.S.C. 9611(p)) is amended by striking paragraph (1) and
 6 inserting the following:

7 “(1) AUTHORIZATION OF APPROPRIATIONS.—

8 “(A) IN GENERAL.—There are authorized
 9 to be appropriated, out of any money in the
 10 Treasury not otherwise appropriated, to the
 11 Hazardous Substance Superfund—

12 “(i) for fiscal year 1998,
 13 \$250,000,000;

14 “(ii) for fiscal year 1999,
 15 \$250,000,000;

16 “(iii) for fiscal year 2000,
 17 \$250,000,000;

18 “(iv) for fiscal year 2001,
 19 \$250,000,000; and

20 “(v) for fiscal year 2002,
 21 \$250,000,000.

22 “(B) ADDITIONAL AMOUNTS.—There is
 23 authorized to be appropriated to the Hazardous
 24 Substance Superfund for each such fiscal year
 25 an amount, in addition to the amount author-
 26 ized by subparagraph (A), equal to so much of

1 the aggregate amount authorized to be appro-
 2 priated under this subsection and section
 3 9507(b) of the Internal Revenue Code of 1986
 4 as has not been appropriated before the begin-
 5 ning of the fiscal year.”.

6 **SEC. 906. ADDITIONAL LIMITATIONS.**

7 Section 111 of the Comprehensive Environmental Re-
 8 sponse, Compensation, and Liability Act of 1980 (42
 9 U.S.C. 9611) (as amended by section 102(c)) is amended
 10 by adding at the end the following:

11 “(t) COMMUNITY RESPONSE ORGANIZATION.—For
 12 the period commencing January 1, 1997, and ending Sep-
 13 tember 30, 2002, not more than \$15,000,000 of the
 14 amounts available in the Fund may be used to make
 15 grants under section 117(f) (relating to Community Re-
 16 sponse Organizations).

17 “(u) RECOVERIES.—Effective beginning January 1,
 18 1997, any response cost recoveries collected by the United
 19 States under this Act shall be credited as offsetting collec-
 20 tions to the Superfund appropriations account.”.

21 **SEC. 907. REIMBURSEMENT OF POTENTIALLY RESPON-**
 22 **SIBLE PARTIES.**

23 Section 111(a) of the Comprehensive Environmental
 24 Response, Compensation, and Liability Act of 1980 (42

1 U.S.C. 9611(a)) (as amended by section 902) is amended
2 by inserting after paragraph (9) the following:

3 “(10) REIMBURSEMENT OF POTENTIALLY RE-
4 SPONSIBLE PARTIES.—If—

5 “(A) a potentially responsible party and
6 the Administrator enter into a settlement under
7 this Act under which the Administrator is reim-
8 bursed for the response costs of the Adminis-
9 trator; and

10 “(B) the Administrator determines,
11 through a Federal audit of response costs, that
12 the costs for which the Administrator is reim-
13 bursed—

14 “(i) are unallowable due to contractor
15 fraud;

16 “(ii) are unallowable under the Fed-
17 eral Acquisition Regulation; or

18 “(iii) should be adjusted due to rou-
19 tine contract and Environmental Protec-
20 tion Agency response cost audit proce-
21 dures,

22 a potentially responsible party may be reimbursed
23 for those costs.”.

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